

**Key Provisions  
Opportunity Scholarship Act  
SB 1, PN 1711  
As Passed by Senate 10/27/11 (27-22)**

**OVERVIEW**

This legislation creates a new article XXV-B (Opportunity Scholarships and Educational Improvement Tax Credits) in the Public School Code. It provides for the awarding of “opportunity scholarships” to parents of low-income school-age students in “low achieving” public schools, beginning with the 2012-2013 school year to pay tuition for their child to attend a nonresident public school or a participating nonpublic school. .

**ELIGIBILITY**

- A “low-income child” is defined as a school-age child with a household income not greater than 185% of the Federal poverty level for the preceding school year, the same amount as eligibility for a reduced price lunch under the Federal Free Lunch Program.
- For the 2012-2013 school year a “low-achieving school” is defined as a public elementary or secondary school in the Commonwealth ranking in the lowest 5% of its designation as elementary or secondary, based on combined math and reading scores from the assessment administered in the most recent school year. 143 schools (located in 18 different school districts) fall within this category at present. The term “assessment” includes the PSSA test, the Keystone exam, an equivalent local assessment or another test established by the State Board of Education to meet requirements of No Child Left Behind. Excluded from the definition of low-achieving school are charter schools, cyber charter schools, area vocational-technical schools, magnet schools and schools that do not draw their student body from a particular attendance boundary.
- Scholarship are to be made available for all low-income students in low-achieving schools as follows:
  - (1) 2012-2013: low-income students who either attended a low-achieving school during 2011-2012 or will be a kindergarten student during 2012-2013 and reside within the attendance boundary of the school as of the first day of the 2012-2013 school year.
  - (2) 2013-2014: low income students who qualified for the program in 2012-2013 plus all low-income students residing within the attendance boundary of a low-achieving school.
  - (3) Beginning in 2018-2019: low-income students in low-achieving schools plus expansion to include all low-income students in any elementary or secondary school within the Commonwealth in which 50% or fewer students scored proficient or above in math or 50% or fewer of its students scored proficient or above in reading on the assessment administered in the most recent school year.

- By February 1, 2012, and February 1 each year thereafter, the Department is required to publish a list of low-achieving schools that will be in effect for purposes of this act for the following school year based on the results of the assessment administered the immediately preceding year.

### **SCHOLARSHIPS**

- For eligible students with household incomes not greater than 130% of the Federal poverty level the amount of the scholarship shall be a base amount equal to 100% of the resident school district's total revenue per pupil for the prior year, minus transportation reimbursements.
- For students with household income above 130% up to 185% of the Federal poverty level the scholarship is reduced by 25%.
- For a nonresident student who is a scholarship recipient and who is a student with a disability, services provided to the student shall be charged against the state's special education subsidy to the resident school district. The resident district cannot be charged more than the difference between the current year costs if the recipient had remained in the district and the amounts of any scholarships. Any costs not covered by this funding are to be borne by the nonresident school district.
- Opportunity scholarships may not be awarded for enrollment in a home education program.
- Nonresident public schools and nonpublic schools are prohibited from charging opportunity scholarship recipients a higher tuition rate than other students.
- If an opportunity scholarship recipient is expelled from a participating nonpublic school before completion of the school year and is subsequently enrolled in his resident school district, PDE is to pay the resident district the prorated amount of the scholarship for the remaining portion of the school year to be used to provide educational services to the student.
- The tuition charged by nonresident public schools for scholarship recipients is limited to the sum of the opportunity scholarship amount and any available local scholarship if provided.
- School districts with at least one low-achieving school are given the option to provide local scholarships to opportunity scholarship recipients residing in their district to attend a nonresident public school. These would be in addition to any opportunity scholarship amount. The local scholarship is to be funded from local revenues and must be in an amount equivalent to at least 10% of the school district's share of its total revenue per pupil. The local scholarship is to be paid to PDE.
- Opportunity scholarship are not considered taxable income under any local taxing ordinance or under the state tax code nor do they count as financial assistance or appropriations to a participating nonpublic school attended by a scholarship recipient.
- Opportunity scholarships may be made from annual appropriations of the General Assembly beginning with the 2012-2013 school year and each year thereafter and from money in the restricted account established in

this act; with the total amount annually limited to the amount of appropriations and the money in the restricted account. Should insufficient money be available to provide scholarships to all eligible recipients in the amount authorized, PDE shall make pro rata reductions in the amount of the scholarship.

- A recipient child enrolled in a nonresident public school or a participating nonpublic school who received a scholarship in the prior school year continues to receive a scholarship in each successive school year until he completes 12<sup>th</sup> grade.
- If a recipient child ceases to qualify as a low-income child, he continues to receive a partial scholarship for the lesser of 5 years or Grade 12 in an amount calculated by PDE in proportion to the percentage by which the child's household income exceeds the definition of "low-income" child.

### **PROGRAM OPERATION**

- In the first year (2012-13), the Commonwealth makes payment for opportunity scholarships for all eligible students
- In the second consecutive school year of enrollment in a nonresident public school or a participating nonpublic school year by a 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 a scholarship, the Commonwealth deducts the Commonwealth's share of the district's total revenue per average daily membership from the basic education and any other subsidies paid to the district. For the purpose of receiving future state subsidies these students continue to be counted in their resident school district's average daily membership.
- For students who already attend a nonpublic school and who are eligible for a scholarship, the Commonwealth is responsible to provide the scholarship funding
- Annually each school district with at least one low-achieving school is required to publicly post notice describing the scholarship program, instructions on how to apply for both it and any available local scholarship, a list of all schools in the district designated as low-achieving, and notice telling the parent that they must directly contact the nonresident public school or participating nonpublic school where they wish to enroll their child for specific application instructions.
- By January 15, 2012, and January 15 each year thereafter, each school district is required to file with PDE a plan indicting the public schools to which children residing in the district are expected to be assigned for the next school year based upon geographic area of residence.
- A nonresident public school does not include a charter school, a cyber charter school, an area vocational-technical school or a school designated as low- achieving.
- A nonresident school district is given the option of accepting a child's enrollment application and the district is to develop and provide the application form. Each school district is to notify PDE if it intends to enroll nonresident scholarship students. If the nonresident school district

chooses to enroll scholarship students it must do so on a random basis from a pool of applicants who meet the application deadline set by PDE. Students who have been expelled or are in the process of being expelled, who have been recruited by the district for athletic purposes and students who do not meet established criteria for participating in a magnet school shall not be included in this pool. Priority may be given to a student who has been awarded a local scholarship or who is the sibling of a student already enrolled in the nonresident district.

- Parents apply directly to the Department of Education for an opportunity scholarship or a local opportunity scholarship. The Department notifies the parent whether the scholarships for which the student applied will be awarded for the following school year.
- The parent of a low-income child who has been awarded a scholarship may apply to one or more nonresident public schools, and, by a date established by PDE, the nonresident district is to provide written notice to the parent and department as to whether the child will be offered enrollment for the following school year. If the child is accepted for enrollment PDE notifies the nonresident and resident school district.
- Payments for scholarships for students enrolling in a nonresident public school are made directly by the Department. Provisions are included providing for the return of funds to the resident or nonresident school district if the scholarship recipient withdraws from the nonresident school during the school year.
- In the case of a scholarship to attend a participating nonpublic school, the parent first applies to PDE for a scholarship for the following year. Upon notification by the department that the scholarship will be awarded the parent applies directly to the participating nonpublic school on an application developed by that school. The nonpublic school is to provide written confirmation to PDE of each scholarship recipient who has accepted an offer of enrollment for the following school year by a date established by the department.
- Upon receipt of written confirmation of enrollment, payments for scholarships for students enrolling in, or already enrolled in, nonpublic schools are made by the Department to parents by check endorsable only to the nonpublic school. Scholarships are to be awarded only for payment of tuition costs at participating nonpublic schools within this Commonwealth. Procedures are included to provide for return of funds should a scholarship student withdraw before the end of the school year. If the parent of a scholarship recipient does not endorse the scholarship check within 90 days of issuance the check is to be returned to the department.

#### **PARTICIPATING NONPUBLIC SCHOOLS**

- To be a “participating” nonpublic school a school must, by an established date, certify to PDE that:
  - (1) It is a nonprofit entity exempt from Federal taxation.

- (2) It does not discriminate in its admission policies or practices with respect to scholarship applicants on the basis of measures of achievement or aptitude or status as a handicapped person.
- (3) Is in full compliance with all applicable federal and state laws on the date prior to the effective date of this act.
- A participating nonpublic school may limit admission to a particular grade level, a single gender or to an academic or social focus in a particular theme (science, mathematics, etc.).
- A participating nonpublic school may not recruit any public school students to enroll for athletic purposes.
- Upon request the school must make available its written school policies and procedures for review by parents of a scholarship recipient seeking enrollment.
- Each participating nonpublic school is required to annually administer an assessment or a nationally normed standardized achievement test (chosen from a list established by PDE) in reading/language arts and mathematics to each opportunity scholarship recipient attending the school in Grades 3, 5, 8, and 11.
  - (1) The participating nonpublic school bears the cost of this testing and may not assess the scholarship recipient.
  - (2) Each participating nonpublic school is required to release each recipient's individual results to the parent of the scholarship recipient.
  - (3) If the school has a publicly accessible website they must post the aggregate results of the assessment online but is not to reveal the identity of any individual student.
  - (4) PDE may not require a participating nonpublic school to provide individual or aggregate testing reports to PDE.
- The state may not impose any additional requirements on participating nonpublic school not otherwise authorized under law or required enrollment of an opportunity scholarship recipient if the school does not offer appropriate programs or is not structured or equipped with the necessary facilities to meet special needs of the scholarship recipient or does not offer a particular program requested.

### **PENALTIES**

- Each scholarship check issued to a parent is to contain a statement noting that failure to endorse the check as directed subjects the endorser to civil penalties and criminal prosecution. A parent who violates this provision may receive: a civil penalty equal to 300% of the full amount of the scholarship; disqualification from future eligibility; criminal prosecution.
- Anyone who fraudulently submits a scholarship application or who knowingly falsifies material information on an application is subject to: a civil penalty imposed by PDE of up to \$1,000 ; prosecution under the Crimes Code ; and disqualification from future participation in the program.

### **TRANSPORTATION**

- A school district that provides transportation for its resident public school pupils with transportation to and from resident public schools under

current law shall provide a student residing within the district, but who regularly attends a nonresident public school located not more than 10 miles from the boundary of the district, with transportation to the nonresident school. Such transportation shall be eligible for reimbursement under the existing transportation formula.

**RESTRICTED OPPORTUNITY SCHOLARSHIP ACCOUNT,**

- Any amount of a scholarship awarded to a recipient in excess of the amount of tuition charged is to be returned to the state and placed in this account.
- The account is established in the General Fund and may be funded by an annual appropriation from the General Assembly, excess funds returned, state funds recovered from resident school districts, and interest.
- Moneys in the account are continuously appropriated to PDE.

**EDUCATION OPPORTUNITY BOARD**

- An independent administrative board is established within PDE consisting of 3 members appointed by the Governor with Senate confirmation.
- Terms of board members are four years.
- The board may hire an executive director and support staff.
- .The board is: to advise the Department on implementing and administering the scholarship programs; approve by a majority vote Departmental implementing guidelines; and, to prepare an annual report (by December 1) to the chairs of the House and Senate Education Committees describing the manner in which the board carries out its duties.
- PDE provides office space, funding and equipment.

**DEPARTMENT OF EDUCATION**

- PDE is: to administer the program and develop operating guidelines,; develop necessary application forms and notices; review and verify income and residence information submitted by applicants; announce the award of scholarships for the following school year; confirm enrollments; make scholarship payments; notify schools districts that offer local scholarships when payments are due; and, make payments to any participating nonresident school districts.
- Implementing guidelines are to be established within 60 days of the effective date of this act, subject to approval of the Opportunity Board. These guidelines are exempt from the Regulatory Review Act, Commonwealth Documents Law, and Commonwealth Attorneys Act.
- The programs, procedures, and guidelines required under this statute are not subject to review, regulation or approval by the State Board of Education.
- PDE is to prepare an annual report to the Governor and General Assembly (by December 1 for the prior school year) and made available to recipients' parents including: total number of scholarships awarded; the total dollar amount of scholarships awarded disaggregated by nonpublic and nonresident school and grade level; administrative costs; a listing of nonresident public schools receiving funding and the amount received; a

list of participating nonpublic schools ( but no funding amounts to be reported); and, the total number and total dollar amount of local scholarships awarded.

### **STUDY**

- Following the 2015-2016 school year PDE is to conduct a study of the effectiveness of this program and is to report its findings and recommendations to the Governor and Majority and Minority Chairs of the House and Senate Education Committees by December 31, 2016.
- This report is may include the addition of programs for special education students.
- The report is to assess the effectiveness of the assessment requirements placed on participating nonpublic schools but shall be conducted using only data posted on a participating school's website. It may not include an examination of individual student test results or nonpublic school files.
- The Legislative Budget and Finance Committee is required to examine programs considered or adopted in other states to serve special needs children and their families and is to report to the General Assembly on these programs by June 30, 2012. This provision is NOT included in Governor's draft.

### **SUPREME COURT EXCLUSIVE JURISDICTION**

The legislation grants the Pennsylvania Supreme Court exclusive jurisdiction to hear any challenge or to render a declaratory judgment on the constitutionality of the program.

### **OPTIONAL LOCAL TUITION GRANT PROGRAM**

Any school district may, out of its state educational funding, establish a program of tuition grants to provide for the education of resident students who want to attend a nonresident public school or a participating nonpublic school on a tuition basis. A student receiving such a grant remains in the average daily membership calculation for the student's resident school district.

## **Comparison to Latest Administration Proposal A05658 10/20/11**

There are four differences between PN 1711 of SB 1 and the Governor's alternative:

- (1) Within the definition of "low-achieving school" the Governor's Office has deleted the expansion of the program that would begin in the 2018-2019 school year. This expansion would make scholarships potentially available to a low-income child in any public elementary or secondary school in which 50% or fewer of students scored proficient or above in math or reading on the assessment administered in the most recent school year.
- (2) The timeline for the Department of Education to develop guidelines for the implementation of the scholarship program is increased in the Governor's proposal from within 60 days of the effective date of the act in SB 1 to within **120** days in the Governor's draft.

- (3) Both the Governor's draft and SB 1 contain a provision within the definition of low-achieving school that the term is not to include a charter school, cyber charter school, area vocational-technical school or magnet school. SB 1 however contains an additional exclusion for "a school that does not draw its student body from a particular attendance boundary".
- (4) The Administration's draft does not contain the provision included in SB 1 that would require the Legislative Budget and Finance Committee to examine programs adopted in other states to serve special needs students and their families and to report to the General Assembly.

### **FISCAL IMPACT**

The Fiscal Note for SB 1, PN 1711 makes several assumptions each fiscal year in determining the cost of the Opportunity Scholarship program:

(1) **FY 2012-2013: \$17,633,265**

Using information from PDE related to enrollment in the Free Lunch Program, the assumption is made that potentially 70,044 eligible low-income students attend the identified low-achieving schools. Based on information from other states that have similarly constructed programs the Senate assumes that 3% of the Free Lunch eligible students (1,943) and 5% (270) of the Reduced Price Lunch eligible students attending the low achieving schools would actually apply for and receive opportunity scholarships (for a total of 2,213 students). Under these assumptions the estimated cost to the state would be \$15,281,260. In addition the Commonwealth would incur additional costs to reimburse school districts for transportation of nonpublic school pupils related to transporting the scholarship students to their new schools in the amount of \$852,005. Also included in the estimate is an additional \$1.5 million administrative cost to PDE for administering the program.

(2) **FY 2013-2014: \$56,406,662**

The assumption was made that 5% (3,258) of the Free Lunch eligible student and 7% (366) of the Reduced Price Lunch eligible students in the identified low achieving schools would apply for and receive scholarships and that all low-income students (7,190) residing within the attendance boundaries of the low achieving schools that already attend nonpublic schools would apply for and receive scholarships. At this point the cost to the Commonwealth would escalate to \$76,022,576 including an additional \$1,387,540 in additional nonpublic transportation reimbursements and \$500,000 for administrative cost to PDE for a grand total of \$77,910,116. *However, it is assumed that the deduction of school district subsidies for the costs of opportunity scholarship recipients enrolled for the second consecutive of \$15,281,260 and estimates that funds accumulated in the Excess Tuition Fund would total \$4,834,654 will offset costs by \$20,115,914.*

(3) **FY 2014-2015: \$39,380,332**

The assumption was made that 7% (4,532) of the Free Lunch

eligible student and 9% (479) of the Reduced Price Lunch eligible students in the identified low achieving schools would apply for and receive scholarships and that all low-income students (7,190) residing with the attendance boundaries of the low achieving schools that already attend nonpublic schools would apply for and receive scholarships. At this point the cost to the Commonwealth would be an estimated \$86,319,983 including \$1,929,235 in additional nonpublic transportation reimbursements and \$500,000 for administrative cost to PDE for a grand total of \$86,819,983. *However, it is assumed that the deduction of school district subsidies for the costs of opportunity scholarship recipients (\$24,897,391) and funds accumulated in the Opportunity Scholarship Account (\$22,542,260) would offset costs by \$47,439,651.*

**(4) FY 2014-2015: \$38,014,095**

The assumption was made that 9% (5,834) of the Free Lunch eligible student and 11% (580) of the Reduced Price Lunch eligible students in the identified low achieving schools would apply for and receive scholarships and that all low-income students (7,190) residing with the attendance boundaries of the low achieving schools that already attend nonpublic schools would apply for and receive scholarships. At this point the cost to the Commonwealth would be an estimated \$96,554,428 including \$2,469,390 in additional nonpublic transportation reimbursements. Additionally PDE estimates \$500,000 in administrative costs. *However, it is assumed that the deduction of school district subsidies for the costs of opportunity scholarship recipients (\$34,653,103) and remaining funds accumulated in the Opportunity Scholarship Account (\$24,387,230) would offset costs by \$59,040,333.*

- Estimates for additional years were not provided in the fiscal note.
- No estimate was included in the Senate fiscal note for the potential additional cost to the state that would accrue as a result of the projected change in the definition of low-achieving school in FY 2018-2019 expanding the program.