

No. 2001-4

AN ACT

HB 996

Amending the act of March 10, 1949 (P.L.30, No.14), entitled "An act relating to the public school system, including certain provisions applicable as well to private and parochial schools; amending, revising, consolidating and changing the laws relating thereto," providing for the establishment of independent schools; further providing for contracts with private residential rehabilitative institutions; providing for professional teacher assessment, for automatic external defibrillators, for an education support services program and for an educational improvement tax credit; and further providing for special education payments to school districts.

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

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

Section 502.1. Establishment of Independent Schools.—(a) A school district may, upon approval of the board of school directors, designate any school of the district as an independent school operating under an agreement with the board of school directors that grants operational control to the governing body of the independent school. The governing body of the independent school, including its composition, membership and selection process, shall be established by the board of school directors. The governing body shall include representatives of parents and teachers. The board of school directors shall consider recommendations from teachers or parents regarding the composition of the governing body. Teacher representatives shall be selected by a vote of teachers employed in the school being designated as an independent school. The governing body of a school designated as an independent school under this section shall have the authority to decide all matters related to the operation of the school pursuant to the agreement established in subsection (b).

(b) The agreement between the board of school directors and the governing body of the independent school shall:

- (1) Describe the governance structure of the independent school.***
- (2) Prescribe the educational goals and mission of the independent school and the curriculum to be offered.***
- (3) Describe the academic, fiscal and other goals and objectives for which the independent school will be held accountable and the evaluation criteria and procedures that will be employed to determine if that school is meeting its goals and objectives.***

(4) Grant the independent school allocation of, and control over, its funding and budget. The independent school's funding shall be determined by the agreement.

(5) Grant the independent school control of its educational program and curriculum.

(6) Prescribe the authority of the independent school to establish working conditions, select and assign professional and nonprofessional employes, including authority to apply section 1724-A as it pertains to certification, establish nonteaching duties, extend the length of the school year and schedule of the school day, including holding class after regular hours.

(7) Define the terms by which the agreement may be terminated, modified, extended or renewed.

(8) An independent school agreement shall be for a period of no less than three (3) nor more than five (5) years and may be renewed for five (5) year periods upon reauthorization by the board of school directors.

(c) Employes assigned to an independent school shall be employes of the school district.

(d) Independent schools shall be subject to the following:

Sections 108, 110, 111, 321, 325, 326, 327, 431, 436, 443, 510, 518, 527, 708, 736, 737, 738, 739, 740, 741, 752, 753, 771, 776, 777, 808, 809, 810, 1006, 1109, 1111, 1112(a), 1310, 1317, 1317.1, 1317.2, 1318, 1327, 1330, 1332, 1303-A, 1513, 1517, 1518, 1521, 1523, 1547, 2014-A, 2513, Article XI except as limited by subsection (b)(6), Article XII except as limited by subsection (b)(6), and Articles XIII-A and XIV.

Act of July 17, 1961 (P.L.776, No.341), known as the "Pennsylvania Fair Educational Opportunities Act."

Act of July 19, 1965 (P.L.215, No.116), entitled "An act providing for the use of eye protective devices by persons engaged in hazardous activities or exposed to known dangers in schools, colleges and universities."

Section 4 of the act of January 25, 1966 (1965 P.L.1546, No.541), referred to as the Higher Education Scholarship Law.

Act of July 12, 1972 (P.L.765, No.181), entitled "An act relating to drugs and alcohol and their abuse, providing for projects and programs and grants to educational agencies, other public or private agencies, institutions or organizations."

Act of December 15, 1986 (P.L.1595, No.175), known as the "Antihazing Law."

The following provisions of 22 Pa. Code:

Chapter 4 (relating to academic standards and assessment).

Section 4.4 (relating to general policies).

Section 4.26 (relating to ESOL).

Chapter 11 (relating to pupil attendance).

Chapter 12 (relating to students).

Chapter 14 (relating to special education services and programs).

Chapter 16 (relating to special education for gifted students).

Section 32.3 (relating to assurances).

Section 121.3 (relating to discrimination prohibited).

Section 235.4 (relating to practices).

Section 235.8 (relating to civil rights).

(e) Nothing in this section shall be construed to supersede or preempt any provisions of a collective bargaining agreement in effect on the effective date of this act.

(f) The department may award grants for the conversion of schools to independent schools. The total amount of grants awarded shall be limited to funds appropriated for this purpose. Grant applications shall be filed in accordance with procedures developed by the department.

Section 2. Section 914.1-A of the act, amended or added April 6, 1980 (P.L.86, No.30), December 17, 1982 (P.L.1378, No.316), June 29, 1984 (P.L.438, No.93), July 11, 1996 (P.L.633, No.107) and November 23, 1999 (P.L.529, No.48), is amended to read:

Section 914.1-A. Contracts with Private Residential Rehabilitative Institutions; Certain Criteria in Department Audits.—(a) Intermediate units and local school districts shall have the power to contract with private residential rehabilitative institutions for educational services to be provided to children as part of any rehabilitative program required in conjunction with the placement of a child in any such institution or in a day treatment program of that institution pursuant to a proceeding under 42 Pa.C.S. Ch. 63 (relating to juvenile matters).

(b) [The] Reimbursement for educational services shall be determined as follows:

(1) For private residential rehabilitative institutions that had five hundred (500) or fewer Pennsylvania resident full-time equivalent students in the school year 1998-1999, for school year 1999-2000 and each school year thereafter the cost of the educational services as provided in subsection (c) shall be determined under section 2561(6) of this act. [If the school district of residence of the child cannot be determined, the costs shall be borne by the Department of Education.] The department shall promulgate audit standards which shall be used by the contracting parties in determining the actual costs which are subject to reimbursement to the private residential rehabilitative institution. The audit standards, promulgated by the department, shall specify as reasonable costs associated with the operation of the educational program offered.

(2) For private residential rehabilitative institutions that had more than five hundred (500) Pennsylvania resident full-time equivalent students in the school year 1998-1999, for the school year 1999-2000 and each school year thereafter the cost shall be determined by multiplying six thousand four hundred fifty dollars and fifty-nine cents (\$6,450.59) times the cumulative percentage change in the Consumer Price Index for All

Urban Consumers from the 1998-1999 school year, times the number of Pennsylvania resident full-time equivalent students, within the limitations of subsection (c).

(3) The department shall effectuate necessary procedures for the transfer of funds from the school district of residence to the school district or intermediate unit in which the private residential rehabilitative institution is located. In effectuating the transfer of funds, the department may deduct the appropriate amount from the basic instructional subsidy of any school district which had resident students that were provided educational services by a private residential rehabilitative institution. ***If the school district of residence of the child cannot be determined, the costs shall be borne by the Department of Education.***

(c) For the purpose of this section, a "private residential rehabilitative institution" means a facility, other than one operated by a public agency, which as of December 31, 1977 provided to juveniles legally committed thereto or legally committed to a day treatment program of that institution pursuant to a proceeding under the act of December 6, 1972 (P.L.1464, No.333), known as the "Juvenile Act," educational services as part of a total rehabilitative package, funded, at least in part, through contractual agreements with the county of which each child is a resident, whereby the institution received from the county an amount per diem for each child legally committed thereto or legally committed to a day treatment program thereof. For the purpose of this section, educational services shall be defined as direct expenditures for instruction and the administration of the instructional program. Any expenditures not pertaining directly to instruction and the administration of the instructional program of the students shall be considered a cost of child welfare services as provided for in sections 704.1 and 704.2, act of June 13, 1967 (P.L.31, No.21), known as the "Public Welfare Code," and as a social service as defined in the regulations promulgated pursuant to that act. Under no circumstances shall a school district or the Department of Education be required to provide funding for programs operated in excess of one hundred eighty (180) days of instruction or nine hundred (900) hours of instruction at the elementary level or nine hundred ninety (990) hours of instruction at the secondary level during any one school year. However, nothing in this section shall be construed to alter or limit the educational rights of exceptional children.

(d) A private residential rehabilitative institution shall be exempt from administrative control by the intermediate unit contracting therewith other than those controls necessary to assure the proper expenditure of funds for the maintenance of the minimum education program provided for in the contract. Such contracts shall not require compliance with this act to any extent greater than such compliance existed on the effective date of this amendatory act.

[(f) The educational program cost criteria of a private residential rehabilitative institution that are deemed allowable by the department

for the private residential rehabilitative institution's 1998-1999 school year shall be acceptable for all future audits conducted by the department.]

Section 3. The act is amended by adding an article to read:

**ARTICLE XII-A.
PROFESSIONAL TEACHER ASSESSMENT.**

Section 1201-A. Short title of article.

This article shall be known and may be cited as the Professional Teacher Assessment Act.

Section 1202-A. Definitions.

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

"Academic standards." The standards adopted under 22 Pa. Code Ch. 4 (relating to academic standards and assessment).

"Area of assignment or certification." Any component of the education profession as it relates to the current job title or description of a teacher or to any area of certification listed on the teacher's instructional certificate issued by the Department of Education.

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

"Professional teacher assessment." An assessment designed by the Department of Education to measure a teacher's knowledge of the academic standards included in the Pennsylvania System of School Assessment test as defined in section 102(6).

"School entity." A school district, intermediate unit, joint school district, area vocational-technical school, charter school, independent school, the Scotland School for Veterans' Children or the Scranton School for the Deaf.

"Science." Includes general science, physics, chemistry, biology and earth and space science.

"Teacher." An individual who holds an instructional certificate issued by the Department of Education under this act and is employed full time as a temporary professional or professional employee by a school entity and provides learning experiences directly to students during the instructional day. This term also includes an uncertified teacher who is employed full time by a charter school or an independent school.

Section 1203-A. Professional teacher assessment program.

(a) Program established.—The department shall develop a professional teacher assessment program to measure a teacher's knowledge of the academic standards applicable to that teacher's area of assignment or certification.

(b) Assessments.—The department shall develop separate professional teacher assessments for elementary school teachers, for middle school teachers and for high school teachers as follows:

(1) All elementary school teachers shall be administered a professional teacher assessment in reading and mathematics.

(2) All middle school teachers and high school teachers shall be administered a professional teacher assessment in reading.

(3) Middle school teachers and high school teachers whose area of assignment or certification includes mathematics or science shall be administered a professional teacher assessment in mathematics.

(4) In addition to the requirements set forth in paragraphs (1) and (2), should additional academic standards be adopted, teachers shall be further assessed based on their area of assignment or certification.

(c) Administration.—The professional teacher assessment shall be administered through use of the Internet in addition to any other form prescribed by the department.

(d) Administration of professional teacher assessment.—

(1) Beginning in the 2001-2002 school year, the department shall annually administer the professional teacher assessment in school entities identified in a manner that will enable approximately 20% of all teachers in this Commonwealth to be assessed.

(2) The department shall develop a rotational schedule that sets forth the school entities that will participate in the professional teacher assessment each year. No school entity shall be required to participate in the professional teacher assessment more than once every five years. The rotational schedule shall be provided to each school entity in this Commonwealth.

(3) The department shall use data submitted under sections 1006 and 2513 to develop the rotational schedule under paragraph (2). For purposes of this article, a charter school and an independent school shall submit the data regarding certified teachers required under sections 1006 and 2513 in a manner prescribed by the department.

(e) School entity procedures.—

(1) Participating school entities shall return completed professional teacher assessments to the department in a manner prescribed by the department.

(2) The department shall adopt guidelines regarding participation requirements for school entities, including standards to excuse teachers from the professional teacher assessment.

(3) A teacher may apply to the department for an alternate assessment date in accordance with guidelines adopted under paragraph (2).

(f) Continuing education credit.—A teacher may count one hour for each completed professional teacher assessment toward the hours of continuing professional education required by section 1205.2.

Section 1204-A. Scoring process.

(a) Scoring.—The department shall provide for the scoring of the professional teacher assessment.

(b) Availability.—*Individual scores may be accessed by a teacher participating in the professional teacher assessment. If a teacher fails to access or request the teacher's individual test score within six months of the administration of the test, the teacher's name shall be deleted from any record related to the test.*

(c) Format.—*The department and school entities shall receive aggregate scores at the building and school entity level in a format established by the department. Results shall be reported to school entities by subject area, content area certification, teaching assignment, years of service and other demographic categories as determined by the department. Aggregate data shall be released only if there are at least ten scores in a category. The department is prohibited from releasing information which could reasonably be expected to reveal the identity of any individual teacher.*

Section 1205-A. Furthering continuing professional development.

A school entity shall use the results of the professional teacher assessment to develop its professional development plans under section 1205.1.

Section 1206-A. Compliance.

A school entity that fails to comply with the requirements of this article or an individual teacher who refuses to participate in the assessment shall be ineligible to participate in professional development programs sponsored by the department until such time as the school entity comes into compliance with this article or the individual teacher applies to the department for an alternate assessment date.

Section 1207-A. Professional development assistance.

Beginning in the 2002-2003 school year, a school entity which determines that a substantial number of its teachers who participated in the assessment and scored at a level which requires additional academic opportunities for teachers shall, upon request, receive assistance from the department in implementing a professional development program that is designed to strengthen the skills covered by the assessment.

Section 1208-A. Collective bargaining agreements.

Nothing contained in this article shall supersede or preempt a collective bargaining agreement between a school entity and an employee organization in effect on the effective date of this article.

Section 1209-A. Confidentiality.

Except as set forth in section 1204-A(c), no information relating to an individual teacher or an individual assessment test score shall be released by the department or an agent of the department. A person who violates this section commits a misdemeanor of the third degree.

Section 1210-A. Annual report.

The department shall submit an annual report to the General Assembly that sets forth the school entities that participated each year and the aggregate scores of each school entity.

Section 4. The act is amended by adding a section to read:

Section 1423. Automatic External Defibrillators.—(a) *For the fiscal year 2001-2002, the department shall establish a one-time automatic external defibrillator program to assist school entities in acquiring automatic external defibrillators.*

(b) *The department, in consultation with the Department of General Services, shall issue an invitation to bid for the cost of automatic external defibrillators. The department shall accept the bid of the lowest responsible bidder and permit any school entity to purchase the devices at the contract bid price.*

(c) *To be eligible to obtain or purchase automatic external defibrillators under the program a school entity must:*

(1) *Assure that two (2) or more persons assigned to the location where the automatic external defibrillator will be primarily housed are trained as required in subsection (d).*

(2) *Ensure that the device will be secured in a safe and readily accessible location and agree to properly maintain and test the device according to the manufacturer's operational guidelines.*

(3) *Submit a valid prescription for the device from a licensed medical practitioner in this Commonwealth.*

(4) *Agree to provide the training required by subsection (d).*

(d) *School personnel who are expected to use the automatic external defibrillator shall complete training in cardiopulmonary resuscitation and in the use of an automatic external defibrillator provided by the American Heart Association, the American Red Cross or through an equivalent course of instruction approved by the Department of Health.*

(e) *A school entity may include the training required by subsection (d) in its continuing professional education plan submitted to the department under section 1205.1.*

(f) *The provisions of 42 Pa.C.S. § 8331.2 (relating to good Samaritan civil immunity for use of automated external defibrillator) shall apply to school employes who render care with an automatic external defibrillator.*

(g) *From funds appropriated for this purpose, the department, upon request, shall provide: up to two (2) automatic external defibrillators to each school district; one (1) automatic external defibrillator to each intermediate unit; and one (1) automatic external defibrillator to each area vocational-technical school.*

(h) *No school entity shall be required to participate in the automatic external defibrillator program.*

(i) *No later than June 30, 2002, the secretary shall submit a report to the General Assembly describing the effectiveness of this section in outfitting the Commonwealth's school entities with automatic external defibrillators.*

(j) *The department may adopt guidelines as necessary to administer this section.*

(k) *As used in this section—*

“Automatic external defibrillator” means a portable device that uses electric shock to restore a stable heart rhythm to an individual in cardiac arrest.

“Department” means the Department of Education of the Commonwealth.

“School entity” means an area vocational-technical school, a charter school, an intermediate unit, a nonpublic school or a school district.

“Secretary” means the Secretary of Education of the Commonwealth.

Section 5. The act is amended by adding articles to read:

ARTICLE XV-C.

EDUCATION SUPPORT SERVICES PROGRAM.

Section 1501-C. Definitions.

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

“Department.” The Department of Education of the Commonwealth.

“Eligible student.” A resident of this Commonwealth who is enrolled in third, fourth, fifth or sixth grade in a school entity and is deemed eligible pursuant to section 1502-C(b).

“Eligibility test.” The Pennsylvania System of School Assessment or a commercially prepared, norm-referenced, standardized achievement test approved by the Department of Education. A list of approved tests under this article shall be published annually in the Pennsylvania-Bulletin.

“Grant.” A grant awarded to a grant recipient under this article.

“Grant recipient.” A resident of this Commonwealth who is a parent, guardian or person in parental relation to an eligible student.

“Program.” The Education Support Services Program established in section 1502-C.

“Provider.” A school entity, an institution of higher education, a nonprofit or for-profit organization or a certified teacher employed by a school entity, that is approved by the Department of Education to provide education support services.

“School entity.” Any of the following located in this Commonwealth: a school district, intermediate unit, joint school district, area vocational-technical school, charter school, independent school, licensed private academic school, accredited school, a school registered under section 1327(b), the Scotland School for Veterans’ Children or the Scranton School for the Deaf.

Section 1502-C. Establishment of program.

(a) *Establishment.—The Education Support Services Program is established within the department to provide individual or small group instruction in reading and mathematics to strengthen the skills that an eligible student needs to achieve the standards in 22 Pa. Code Ch. 4*

(relating to academic standards and assessment), which shall be provided at a time other than the regularly scheduled school hours.

(b) Eligibility.—The department shall utilize the Pennsylvania System of School Assessment test or other test results to identify eligible students under this article. Scores used to determine eligible students in each grade shall be published annually in the Pennsylvania Bulletin.

(c) Approval.—A provider must be approved by the department in order to provide education support services under this article.

Section 1503-C. Application and approval.

(a) Application.—A prospective grant recipient shall apply annually to the department for a grant to purchase education support services for an eligible student from an approved provider in a time and manner prescribed by the department.

(b) Required information.—An application submitted under this section shall include verification of the eligibility test results and such other information as the department may require.

Section 1504-C. Powers and duties of the department.

The department shall:

(1) Establish criteria to annually identify eligible students in grades three, four, five and six to participate in the program under section 1502-C.

(2) Approve providers of education support services.

(3) Adopt standards, procedures and guidelines to be used to approve providers of education support services under this article.

(4) Award grants to a grant recipient in an amount not to exceed \$500 per fiscal year for each eligible student.

(5) Establish minimum qualifications for individuals utilized by providers of education support services.

(6) Establish periods during which applications will be reviewed to accommodate the dates when results of approved eligibility tests become available.

Section 1505-C. Providers.

A prospective provider shall submit an application to the department for approval to provide education support services under this article. The application shall include a description of the services to be provided, the cost of the services, the qualification of all individuals providing those services, including evidence of compliance with section 111, and such other information as may be required by the department.

Section 1506-C. Notification of program.

A school entity in this Commonwealth with students enrolled in third, fourth, fifth or sixth grade shall notify parents of the availability of education support services at such time as the parents receive the results of any eligibility test.

Section 1507-C. Payment of grants.

(a) Certificates.—A certificate for education support services under this article shall be issued by the department in an amount authorizing up to \$500 for each eligible student identified on the certificate. The certificate shall be issued to the grant recipient and shall be valid only for the fiscal year in which it is issued. After receiving the certificate from a grant recipient, the provider shall include the following information on the certificate: name of eligible student served, type of instruction, date and length of instruction and cost of instruction provided to the eligible student. When the amount of the certificate has been utilized or when the eligible student is no longer receiving education support services from the provider, the provider shall return the completed certificate to the grant recipient for submission to the department for payment. The department shall make payment directly to the grant recipient for the amount due. Grant recipients must send all outstanding certificates to the department for payment no later than 90 days after receiving the completed certificate from the provider.

(b) Penalty for grant recipients.—A grant recipient who knowingly defrauds the Commonwealth by receiving reimbursement for education support services not rendered to the eligible student and grant recipient identified on the certificate commits a misdemeanor of the third degree and shall, upon conviction, be sentenced to pay a fine of not more than \$1,000 per violation and shall be disqualified from eligibility for an additional grant for a period of not less than five years.

(c) Penalty for providers.—A provider that knowingly violates section 1509-C or knowingly defrauds the Commonwealth by receiving reimbursement for education support services not rendered to the eligible student and grant recipient identified on the certificate commits a misdemeanor of the third degree and shall, upon conviction, be sentenced to pay a fine of not more than \$1,000 per violation and shall be barred from participation in the program for not less than five years.

Section 1508-C. Limitations.

(a) Amount.—The amount of grants provided under this article in a fiscal year shall be limited to the funds appropriated for that purpose. No more than 10% of the total funds appropriated for this program in any fiscal year shall be awarded to grant recipients within a specific school district except that, if the department determines that all school entities in the Commonwealth have had an opportunity to participate in the program and that funds remain available, it may waive the 10% limitation under this subsection.

(b) Availability of funds.—In the event that the funds appropriated in any fiscal year are insufficient to provide grants to all grant recipients, grants shall be awarded on a first-come, first-served basis. The department shall hold a portion of the funds in reserve to ensure that

money is available for each application period established under section 1504-C(6).

Section 1509-C. Confidentiality.

Nothing in this article shall authorize the department, a school entity or a provider to release or otherwise utilize student identifiable information or individual student test scores for purposes other than the administration of this article.

Section 1510-C. Nontaxable income.

A grant received by a grant recipient shall not be considered to be taxable income for the purposes of Article III of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971.

Section 1511-C. Applicability.

Services provided under this article do not constitute tutoring or instruction under the act of January 28, 1988 (P.L.24, No.11), known as the Private Academic Schools Act.

ARTICLE XX-B.

EDUCATIONAL IMPROVEMENT TAX CREDIT.

Section 2001-B. Scope.

This article deals with the educational improvement tax credit.

Section 2002-B. Definitions.

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

"Business firm." *An entity authorized to do business in this Commonwealth and subject to taxes imposed under Article IV, VI, VII, VII-A, VIII, VIII-A, IX or XV of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971.*

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

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

"Educational improvement organization." *A nonprofit entity which:*

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

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

"Eligible student." *A school-age student who is enrolled in a school and is a member of a household with an annual household income of not more than \$50,000. An income allowance of \$10,000 shall be allowed for each eligible student and dependent member of the household.*

"Household." *An individual living alone or with the following: a spouse, parent and their unemancipated minor children; and other*

unemancipated minor children who are related by blood or marriage; or other adults or unemancipated minor children living in the household who are dependent upon the individual.

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

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

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

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

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

(5) *Payments to reimburse actual expenses.*

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

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

“Innovative educational program.” *An advanced academic or similar program that is not part of the regular academic program of a public school but that enhances the curriculum or academic program of the public school.*

“Public school.” *A public kindergarten, elementary school or secondary school at which the compulsory attendance requirements of this Commonwealth may be met and which meets the applicable requirements of Title VI of the Civil Rights Act of 1964 (Public Law 88-352, 78 Stat. 241).*

“Scholarship organization.” *A nonprofit entity which:*

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

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

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

“School.” *A public or nonpublic kindergarten, elementary school or secondary school at which the compulsory attendance requirements of the*

Commonwealth may be met and which meets the applicable requirements of Title VI of the Civil Rights Act of 1964 (Public Law 88-352, 78 Stat. 241).

“School age.” Children from the earliest admission age to a school’s kindergarten program or, when no kindergarten program is provided, the school’s earliest admission age for beginners, until the end of the school year the student attains 21 years of age or graduation from high school, whichever occurs first.

Section 2003-B. Qualification and application.

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

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

(c) Scholarship program.—A scholarship organization must certify to the department that the organization is eligible to participate in the program established under this article.

(d) Educational improvement organization.—An application submitted by an educational improvement organization must describe its proposed innovative educational program or programs in a form prescribed by the department. The department shall consult with the Department of Education as necessary. The department shall review and approve or disapprove the application.

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

(f) Publication.—The department shall annually publish a list of each scholarship or educational improvement organization qualified under this section in the Pennsylvania Bulletin. The list shall also be posted and updated as necessary on the publicly accessible World Wide Web site of the department.

Section 2004-B. Application.

(a) Scholarship organization.—A business firm shall apply to the department for a tax credit under section 2005-B. A business firm shall receive a tax credit under this article if the scholarship organization that receives the contribution appears on the list established under section 2003-B(f).

(b) Educational improvement organization.—A business firm must apply to the department for a credit under section 2005-B. A business firm shall receive a tax credit under this article if the department has approved the program provided by the educational improvement organization that receives the contribution.

(c) Availability of tax credits.—Tax credits under this article shall be made available by the department on a first-come, first-served basis within the limitation established under section 2006-B(a).

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

Section 2005-B. Tax credit.

(a) General rule.—In accordance with section 2006-B(a), the Department of Revenue shall grant a tax credit against any tax due under Article IV, VI, VII, VII-A, VIII, VIII-A, IX or XV of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, to a business firm providing proof of a contribution to a scholarship organization or educational improvement organization in the taxable year in which the contribution is made which shall not exceed 75% of the total amount contributed during the taxable year by the business firm. Such credit shall not exceed \$100,000 annually per business firm.

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

Section 2006-B. Limitations.

(a) Amount.—The total aggregate amount of all tax credits approved shall not exceed \$30,000,000 in a fiscal year. No less than \$20,000,000 of the total aggregate amount shall be used to provide tax credits for contributions from business firms to scholarship organizations. No less than \$10,000,000 of the total aggregate amount shall be used to provide tax credits for contributions from business firms to educational improvement organizations.

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

(c) Tax liability.—A tax credit granted for any one taxable year may not exceed the tax liability of a business firm.

(d) Use.—A tax credit not used in the taxable year the contribution was made may not be carried forward or carried back and is not refundable or transferable.

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

Section 2007-B. Lists.

The Department of Revenue shall provide a list of all scholarship organizations and educational improvement organizations receiving contributions from business firms granted a tax credit under this article to the General Assembly by June 30 of each year.

Section 2008-B. Guidelines.

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

Section 6. Section 2509.5 of the act is amended by adding subsections to read:

Section 2509.5. Special Education Payments to School Districts.—* * *

(gg) During the 2001-2002 school year, each school district shall be paid the amount it received during the 2000-2001 school year under subsections (bb), (cc), (dd), (ee) and (ff).

(hh) During the 2001-2002 school year, sixty-four million nine hundred thousand dollars (\$64,900,000) of the funds appropriated to the Department of Education for special education shall be used to provide supplemental funding for special education to all school districts. The supplemental funding shall be calculated as follows: multiply each school district's 2001-2002 market value/income aid ratio by sixteen per centum (16%) of the 2000-2001 average daily membership and multiply this product by sixty-four million nine hundred thousand dollars (\$64,900,000) and divide the resultant product by the sum of the products of the 2001-2002 market value income aid ratio multiplied by sixteen per centum (16%) of the 2000-2001 average daily membership for all school districts.

(ii) During the 2001-2002 school year, a school district with an incidence rate of mildly and severely disabled students greater than one hundred twenty-five per centum (125%) of the Statewide average incidence rate of mildly and severely disabled students shall qualify to receive a supplemental payment, as specified in this subsection, from funds appropriated to the Department of Education for special education. A school district's incidence rate of mildly and severely disabled students shall be calculated by dividing the school district's 1999 child count of students with disabilities collected and reported under sections 611(d)(2) and 618(a) of the Individuals with Disabilities Education Act (Public Law 91-230, 20 U.S.C. §§ 1411(d)(2) and 1418(a)) and 34 CFR 300.750 (relating to annual report of children served—report requirement) by the school district's 1999-2000 total enrollment, including students attending public charter schools, reported to the Department of Education. The

Statewide average incidence rate of mildly and severely disabled students shall be calculated by dividing the Statewide total 1999 child count of students with disabilities for all school districts by the 1999-2000 Statewide total enrollment, including students attending public charter schools, for all school districts. The payment to a qualifying school district shall be calculated as follows:

(1) subtract one hundred twenty-five per centum (125%) of the Statewide average incidence rate from the school district's incidence rate;

(2) multiply the difference obtained in clause (1) by the school district's 2000-2001 school year average daily membership; and

(3) multiply the product obtained in clause (2) by one thousand six hundred fifty dollars (\$1,650).

(jj) For the 2001-2002 school year, each school district shall receive additional funding as necessary so that the sum of the payments school districts receive under subsections (gg), (hh), (ii) and this subsection is greater than or equal to one hundred five per centum (105%) of the payments to school districts for the 2000-2001 school year under subsections (bb), (cc), (dd), (ee) and (ff).

Section 7. This act shall take effect as follows:

(1) The following provisions of the act shall take effect July 1, 2001, or immediately, whichever is later:

(i) The addition of section 1423 of the act.

(ii) The addition of Article XV-C of the act.

(iii) The addition of Article XX-B of the act.

(iv) The addition of section 2509.5(gg), (hh), (ii) and (jj) of the act.

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

APPROVED—The 17th day of May, A.D. 2001.

THOMAS J. RIDGE