

No. 2014-194

AN ACT

HB 91

Amending the act of March 4, 1971 (P.L.6, No.2), entitled "An act relating to tax reform and State taxation by codifying and enumerating certain subjects of taxation and imposing taxes thereon; providing procedures for the payment, collection, administration and enforcement thereof; providing for tax credits in certain cases; conferring powers and imposing duties upon the Department of Revenue, certain employers, fiduciaries, individuals, persons, corporations and other entities; prescribing crimes, offenses and penalties," further providing for educational improvement tax credit; and repealing provisions relating to educational opportunity scholarship tax credit; and, in city revitalization and improvement zones, further providing for definitions and for establishment of contracting authority.

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

Section 1. Article XVII-F heading of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, added October 9, 2009 (P.L.451, No.48), is amended to read:

ARTICLE XVII-F
EDUCATIONAL [IMPROVEMENT TAX CREDIT]
TAX CREDITS

Section 2. Section 1701-F of the act, added October 9, 2009 (P.L.451, No.48), is amended to read:

Section 1701-F. Scope of article.

This article establishes the educational improvement [tax credit] *and opportunity scholarship tax credits*.

Section 3. The definitions of "business firm," "income allowance," "maximum annual household income," "pass-through entity," "pre-kindergarten program" and "public school" in section 1702-F of the act, amended or added October 9, 2009 (P.L.451, No.48) and July 2, 2012 (P.L.751, No.85), are amended and the section is amended by adding definitions to read:

Section 1702-F. 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:

"Applicable taxes." Any of the taxes due under Article III, IV, VI, VII, VIII, IX, XV or XX or a tax under Article XVI of the act of May 17, 1921 (P.L.682, No.284), known as *The Insurance Company Law of 1921*.

"Applicant." An eligible student who applies for a scholarship.

"Assessment." The Pennsylvania System of School Assessment test, the Keystone Exam, an equivalent local assessment or another test established by the State Board of Education to meet the requirements of section 2603-

B(d)(10)(i) of the Public School Code of 1949, and required under the No Child Left Behind Act of 2001 (Public Law 107-110, 115 Stat. 1425) or its successor statute or another test required to achieve other standards established by the Department of Education for the public school or school district under 22 Pa. Code § 403.3 (relating to single accountability system).

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

"Average daily membership." As defined in section 2501(3) of the Public School Code of 1949.

"Business firm." An entity authorized to do business in this Commonwealth and subject to taxes imposed under Article III, IV, VI, VII, VIII, IX [or XV], XV or XX or a tax under Article XVI of the act of May 17, 1921 (P.L.682, No.284), known as The Insurance Company Law of 1921. The term includes a pass-through entity[.], including a pass-through entity, the purpose of which is the making of contributions under this article and whose shareholders, partners or members are composed of owners or employes of other business firms.

"Career and technical school." A public secondary school established under the provisions of Article XVIII of the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949.

* * *

"Elementary school." A school which is not a secondary school.

* * *

"Income allowance."

[(1) As follows:

(i) Before July 1, 2011, \$10,000 for each eligible student, eligible pre-kindergarten student and dependent member of the household.

(ii) After June 30, 2011, and through June 30, 2013, \$12,000 for each eligible student, eligible pre-kindergarten student and dependent member of the household.

(iii) After June 30, 2013, and through June 30, 2014, \$15,000 for each eligible student, eligible pre-kindergarten student and dependent member of the household.

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

The base amount of \$15,000 for each eligible student, eligible pre-kindergarten student and dependent member of the household. Beginning July 1, 2014, the department shall annually adjust the base amount to reflect upward changes in the Consumer Price Index for All Urban Consumers for the Pennsylvania, New Jersey, Delaware and Maryland area for the preceding 12 months. The department shall immediately

submit the adjusted amounts to the Legislative Reference Bureau for publication as a notice in the Pennsylvania Bulletin.

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"Kindergarten." *A one-year formal educational program that occurs during the school year immediately prior to first grade. The term includes a part-time and a full-time program.*

"Low-achieving school." *A public school that ranked in the lowest 15% of the school's designation as an elementary school or a secondary school based on combined mathematics and reading scores from the annual assessment administered in the previous school year and for which the Department of Education has posted results on the Department of Education's publicly accessible Internet website. The term does not include a charter school, cyber charter school or area vocational-technical school.*

"Maximum annual household income."

(1) [Except as set forth in paragraph (2) and subject to paragraph (3), as follows:

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

(ii) After June 30, 2011, and through June 30, 2013, not more than \$60,000.

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

Subject to adjustment under paragraphs (2) and (3), the amount of \$75,000, plus the applicable income allowance.

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

(i) [the sum of:

(A)] the applicable amount under paragraph (1)[; and

(B) the applicable income allowance]; by

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

Support Level	Support Level Factor
1	1.50
2	2.993

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

"Nonpublic school." *A school which is a nonprofit organization and which is located in this Commonwealth. The term does not include a public school.*

"Opportunity scholarship." *An award given to an applicant to pay tuition and school-related fees necessary to attend a participating nonpublic school or a participating public school located in a school district which is not the recipient's school district of residence.*

"Opportunity 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 the entity's annual cash receipts to an opportunity scholarship program.

For the purposes of this definition, a nonprofit entity contributes the entity's cash receipts to an opportunity scholarship program when the entity expends or otherwise irrevocably encumbers those funds for distribution during the then-current fiscal year of the nonprofit entity or during the next succeeding fiscal year of the nonprofit entity.

"Opportunity scholarship program." A program to provide opportunity scholarships to eligible students who reside within the attendance area of a low-achieving school.

"Parent." An individual who:

(1) is a resident of this Commonwealth; and

(2) either:

(i) has legal custody or guardianship of a student; or

(ii) keeps in the individual's home a student and supports the student gratis as if the student were a lineal descendant of the individual.

"Participating nonpublic school." A nonpublic school which notifies the Department of Education under section 1711-F that the school wishes to accept opportunity scholarship recipients.

"Participating public school." A public school in a school district which notifies the Department of Education under section 1711-F that the school wishes to accept opportunity scholarship recipients. The term does not include a low-achieving school.

"Pass-through entity." A partnership as defined in section 301(n.0), a single-member limited liability company treated as a disregarded entity for Federal income tax purposes or a Pennsylvania S corporation as defined in section 301(n.1). The term includes a pass-through entity that owns an interest in a pass-through entity.

"Pre-kindergarten program." A program of instruction for three-year-old [or], four-year-old, five-year-old or six-year-old students, other than a kindergarten, that utilizes a curriculum aligned with the curriculum of the school with which it is affiliated and which provides one of the following:

(1) A minimum of two hours of instructional and developmental activities per day at least 60 days per school year.

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

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"Public school." A public pre-kindergarten where compulsory attendance requirements do not apply or a public kindergarten, elementary school [or], secondary school or career and technical 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).

"Public School Code of 1949." The act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949.

"Recipient." An applicant who receives a scholarship.

"School district of residence." The school district in which the student's primary domicile is located.

"Secondary school." A school with an eleventh grade.

"Student." An individual who meets all of the following:

- (1) Is school age.*
- (2) Is a resident of this Commonwealth.*
- (3) Attends or is about to attend a school.*

Section 4. Section 1703-F of the act, amended or added October 9, 2009 (P.L.451, No.48) and July 2, 2012 (P.L.751, No.85), is amended to read: Section 1703-F. Qualification and application *by organizations.*

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

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

(c) Scholarship organizations and pre-kindergarten scholarship organizations.—A scholarship organization or pre-kindergarten scholarship organization must certify to the department that the organization is eligible to participate in the **educational improvement tax credit** program established under this article and must agree to annually report the following information to the department by September 1 of each year:

- (1) (i) The number of scholarships awarded during the immediately preceding school year to eligible pre-kindergarten students.
- (ii) The total and average amounts of the scholarships awarded during the immediately preceding school year to eligible pre-kindergarten students.
- (iii) The number of scholarships awarded during the immediately preceding school year to eligible students in grades kindergarten through eight.
- (iv) The total and average amounts of the scholarships awarded during the immediately preceding school year to eligible students in grades kindergarten through eight.
- (v) The number of scholarships awarded during the immediately preceding school year to eligible students in grades nine through 12.

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

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

(viii) The total number of scholarship applications processed and the amounts of any application fees charged, either per scholarship application or in the aggregate through a third-party processor.

(ix) The organization's Federal Form 990 or other Federal form indicating the tax status of the organization for Federal tax purposes, if any, and a copy of a compilation, review or audit of the organization's financial statements conducted by a certified public accounting firm.

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

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

(d) Educational improvement organization.—

(1) An application submitted by an educational improvement organization must describe its proposed innovative educational program or programs in a form prescribed by the department. The department shall consult with the Department of Education as necessary. The department shall review and approve or disapprove the application. In order to be eligible to participate in the *educational improvement tax credit* program established under this article, an educational improvement organization must agree to annually report the following information to the department by **[December 1, 2005, and]** September 1 of each year **[thereafter]**:

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

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

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

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

(v) The organization's Federal Form 990 or other Federal form indicating the tax status of the organization for Federal tax purposes, if any, and a copy of a compilation, review or audit of the organization's financial statements conducted by a certified public accounting firm.

(2) The information required under paragraph (1) shall be submitted on a form provided by the department. No later than **[September 1, 2005, and]** May 1 of each year **[thereafter]**, the department shall annually distribute such sample forms, together with the forms on which the reports are required to be made, to each listed educational improvement organization.

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

(d.1) Opportunity scholarship organizations.—

(1) An opportunity scholarship organization must enhance the educational opportunities available to students in this Commonwealth by providing opportunity scholarships to eligible students who reside within the attendance boundary of low-achieving schools to attend schools which are not low-achieving schools and which are not public schools within the eligible student's school district of residence. By February 15 of each year, an opportunity scholarship organization must certify to the department that the organization is eligible to participate in the opportunity scholarship tax credit program.

(2) An opportunity scholarship organization must agree to report the following information on a form provided by the department by September 1 of each year:

(i) The total number of applications for opportunity scholarships received during the immediately preceding school year from eligible students in grades kindergarten through eight.

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

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

(iv) The total number of applications for opportunity scholarships received during the immediately preceding school year from eligible students in grades nine through 12.

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

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

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

which the opportunity scholarship organization awarded opportunity scholarships.

(viii) The number of opportunity scholarships awarded during the immediately preceding school year to applicants with a household income that does not exceed 185% of the Federal poverty level.

(ix) The total and average amounts of opportunity scholarships awarded during the immediately preceding school year to applicants with a household income that does not exceed 185% of the Federal poverty level.

(x) The number of opportunity scholarships awarded during the immediately preceding school year to applicants with a household income that does not exceed 185% of the Federal poverty level and who reside within a first class school district.

(xi) The total and average amounts of opportunity scholarships awarded during the immediately preceding school year to applicants with a household income that does not exceed 185% of the Federal poverty level and who reside within a first class school district.

(xii) The number of opportunity scholarships awarded during the immediately preceding school year to applicants with a household income that does not exceed 185% of the Federal poverty level and who reside within a school district that was designated as a financial recovery school district under Article VI-A of the Public School Code of 1949 at the time of the award.

(xiii) The total and average amounts of opportunity scholarships awarded during the immediately preceding school year to applicants with a household income that does not exceed 185% of the Federal poverty level and who reside within a school district that was designated as a financial recovery school district under Article VI-A of the Public School Code of 1949 at the time of the award.

(xiv) The total number of opportunity scholarship applications processed and the amounts of any application fees charged either per opportunity scholarship application or in the aggregate through a third-party processor.

(xv) The opportunity scholarship organization's Federal Form 990 or other Federal form indicating the tax status of the opportunity scholarship organization for Federal tax purposes, if any, and a copy of a compilation, review or audit of the opportunity scholarship organization's financial statements conducted by a certified public accounting firm.

(3) No later than May 1 of each year, the department shall annually distribute such sample forms, together with the forms on which the reports are required to be made, to each listed opportunity scholarship organization.

(4) The department may not require other information to be provided by opportunity scholarship organizations, except as expressly authorized in this article.

(e) Notification.—The department shall notify the scholarship organization, pre-kindergarten scholarship organization [or], educational

improvement **organization or opportunity scholarship** organization that the organization meets the requirements of **and is qualified under** 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 organization, pre-kindergarten scholarship organization [or], educational improvement **organization and opportunity scholarship** organization qualified under this section in the Pennsylvania Bulletin. The list shall also be posted and updated as necessary on the publicly accessible Internet website of the department.

Section 5. Section 1704-F of the act, added October 9, 2009 (P.L.451, No.48), is amended to read:

Section 1704-F. Application **by business firms**.

(a) Scholarship organization [or], pre-kindergarten scholarship organization **or opportunity scholarship organization**.—A business firm shall apply to the department for a tax credit **for contributions to a scholarship organization, pre-kindergarten scholarship organization or opportunity scholarship organization** under section 1705-F. A business firm shall receive a tax credit under this article if the scholarship organization [or], pre-kindergarten scholarship organization **or opportunity scholarship organization** that receives the contribution appears on the list established under section 1703-F(f), **subject to the limitations in sections 1705-F and 1706-F**.

(b) Educational improvement organization.—A business firm must apply to the department for a credit **for a contribution to an educational improvement organization** under section 1705-F. 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, **subject to the limitations in sections 1705-F and 1706-F**.

(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 1706-F(a).

(d) Contributions.—A contribution by a business firm to a scholarship organization, pre-kindergarten **scholarship organization, opportunity** 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).

(e) **Application in the alternative**.—**At the time of application for an educational improvement or opportunity scholarship tax credit, the department shall advise a business firm that the firm may elect that its application for a particular credit should, in the alternative, be deemed an application for a different tax credit authorized under this section if the business firm's preferred choice of tax credit is not available. When a business firm does not receive its preferred choice of tax credit, the department shall promptly consider the business firm's application in the alternative for a different tax credit authorized under this section.**

Section 6. Sections 1705-F and 1706-F of the act, amended July 2, 2012 (P.L.751, No.85), are amended to read:

Section 1705-F. Tax [credit] **credits**.

(a) Scholarship or educational improvement organizations.—In accordance with section [1706-F(a)] *1706-F*, the Department of Revenue shall grant a tax credit against any [tax due under Article III, IV, VI, VII, VIII, IX or XV or under Article XVI of the act of May 17, 1921 (P.L.682, No.284), known as The Insurance Company Law of 1921,] *applicable tax* 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] *in accordance with the following*:

(1) *The tax credit* shall not exceed 75% of the total amount contributed during the taxable year by the business firm.

(2) For fiscal year [2012-2013, the tax credit shall not exceed \$400,000 annually per business firm for contributions made to scholarship organizations or educational improvement organizations. For fiscal year 2013-2014] *2014-2015*, and each fiscal year thereafter, the tax credit shall not exceed \$750,000 annually per business firm for contributions made to scholarship organizations or educational improvement organizations[,] *except as provided under subsection (i)*.

(a.1) *Opportunity scholarship organizations.*—In accordance with section *1706-F*, the Department of Revenue shall grant a tax credit against any *applicable tax* to a business firm providing proof of a contribution to an *opportunity scholarship organization* in the taxable year in which the contribution is made *in accordance with the following*:

(1) *The tax credit* shall not exceed 75% of the total amount contributed during the taxable year by the business firm.

(2) For fiscal year *2014-2015*, and each fiscal year thereafter, the tax credit shall not exceed \$750,000 annually per business firm for contributions made to *opportunity scholarship organizations*, *except as provided in subsection (i)*.

(b) Additional amount.—[The] *In accordance with section 1706-F*, 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 *or opportunity scholarship organization* with the same amount of contribution for two consecutive tax years. The business firm must provide the written commitment under this subsection to the department at the time of application.

(c) Pre-kindergarten scholarship organizations.—In accordance with section [1706-F(a)] *1706-F*, the Department of Revenue shall grant a tax credit against any [tax due under Article III, IV, VI, VII, VIII, IX or XV or under Article XVI of The Insurance Company Law of 1921] *applicable tax* to a business firm providing proof of a contribution to a pre-kindergarten scholarship organization in the taxable year in which the contribution is made [which] *in accordance with the following*:

(1) *The tax credit* shall be equal to 100% of the first \$10,000 contributed during the taxable year by the business firm[,] and [which] shall not exceed 90% of the remaining amount contributed during the taxable year by the business firm. *At the time of application, a business firm may provide a written commitment to the department to provide the*

pre-kindergarten scholarship organization with at least the same amount of contribution for two consecutive years.

(2) [Such] *The tax credit shall not exceed \$200,000 annually per business firm for contributions made to pre-kindergarten scholarship organizations, except as provided in subsection (i).*

(d) Combination of tax credits.—[A] *In accordance with section 1706-F, a business firm may receive tax credits from the Department of Revenue in any tax year for any combination of contributions under [subsection (a) or (b) or (c)] subsection (a), (a.1), (b) or (c). [In] Except as provided in subsection (i), in no case may a business firm receive tax credits in any tax year in excess of the following:*

(1) *[\$400,000 for] \$750,000 for combined contributions [under subsections (a) and (b) made during fiscal year 2012-2013 or in excess of] to scholarship and educational improvement organizations under subsections (a) and (b).*

(2) *\$750,000 for contributions [under subsections (a) and (b) made after fiscal year 2012-2013. In no case shall a business firm receive tax credits in any tax year in excess of] to opportunity scholarship organizations under subsections (a.1) and (b).*

(3) *\$200,000 for contributions [under subsection (c)] to pre-kindergarten scholarship organizations under subsection (c).*

(e) Pass-through entity.—

(1) *If a pass-through entity does not intend to use all approved tax credits under this section, it may elect in writing to [transfer] distribute for no consideration all or a portion of the credit to shareholders, members or partners in proportion to the [share of the entity's distributive income to which] percentage interest of the shareholder, member or partner [is entitled for use] in distributions from the pass-through entity, which credits may be used by the shareholders, members or partners in the taxable year in which the contribution is made or in the taxable year immediately following the year in which the contribution is made. The election shall designate the year in which the [transferred] distributed credits are to be used and shall be made according to procedures established by the Department of Revenue. A pass-through entity that received a distribution from a pass-through entity under this paragraph may make a distribution under this paragraph.*

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

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

(4) *An individual shareholder, partner or member may apply a credit distributed under this section to income taxable under Article III to the shareholder, partner or member, to the spouse of the shareholder, partner or member or to both, if both the shareholder, partner or member and the spouse report income on a joint personal income tax return.*

(f) Restriction on applicability of credits.—No credits granted under this section shall be applied against any tax withheld by an employer from an employee under Article III.

(g) Time of application for credits.—

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

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

(h) Waiting list.—The department shall maintain a waiting list consisting of each business firm which chooses to be included on the list and whose application has not been approved because all available tax credits have been awarded. A business firm that was not awarded a tax credit due to a lack of available tax credits shall be notified of and offered a place on the waiting list. When tax credits become available, the department shall award the tax credits to the business firms in the order in which the business firms were placed on the waiting list.

(i) Temporary increase in maximum tax credits available.—

(1) If all tax credits authorized under this article for contributions to the category of scholarship organizations, opportunity scholarship organizations or pre-kindergarten scholarship organizations have not been awarded as of October 1 of any fiscal year, then for applications accepted by the department from October 1 through November 30 of such fiscal year, the limitations set forth in subsections (a), (a.1), (c) and (d) relating to the maximum amount of tax credits a business firm can receive during a fiscal year for contributions to each such category of organizations shall not apply. Under this paragraph, the department may accept applications under section 1704-F from October 1 through November 30 as follows:

(i) A business firm, including a business firm that already applied for the maximum tax credits available pursuant to subsections (a) and (d), may apply under section 1704-F(a) for up to the total amount of tax credits remaining available for contributions to scholarship organizations for the fiscal year as set forth in section 1706-F(a)(1).

(ii) A business firm, including a business firm that already applied for the maximum tax credits available pursuant to subsections (a.1) and (d), may apply under section 1704-F(a) for up to the total amount of tax credits remaining available for contributions to opportunity scholarship organizations for the fiscal year as set forth in section 1706-F(a)(3).

(iii) A business firm, including a business firm that already applied for the maximum tax credits available pursuant to subsections (c) and (d), may apply under section 1704-F(a) for up to the total amount of tax credits remaining available for contributions

to pre-kindergarten scholarship organizations for the fiscal year as set forth in section 1706-F(a)(2).

(2) The provisions of subsection (b) shall not apply to applications for tax credits made under this subsection. Tax credits awarded under this subsection shall not exceed 75% of the total amount contributed during the taxable year by a business firm pursuant to an application filed under this subsection.

(3) Prior to the award of tax credits applied for under this subsection, the department shall first award tax credits applied for by a business firm during the period October 1 through November 30 in an amount no greater than the maximum amount of tax credits for which a business firm is eligible under subsections (a), (a.1), (c) and (d). The tax credits shall be awarded on a first-come, first-served basis as set forth in section 1704-F(c).

(4) After the department has awarded tax credits under paragraph (3), any tax credits remaining available within the category of scholarship organizations, opportunity scholarship organizations and pre-kindergarten scholarship organizations shall be awarded based on the total amount of tax credits within each category of organization for which applications are received under this subsection from October 1 through November 30 of the fiscal year as follows:

(i) If the total amount of tax credits applied for by all business firms under this subsection does not exceed the total amount of tax credits that remained available for award within a category as of October 1, less those tax credits awarded under paragraph (3), then each business firm may be awarded the full amount of tax credits applied for.

(ii) If the total amount of tax credits applied for by all business firms under this subsection exceeds the total amount of tax credits that remained available for award within a category as of October 1, less those tax credits awarded under paragraph (3), then each business firm may be awarded an amount of tax credits determined by multiplying the amount of tax credits applied for by the business firm by a ratio, the numerator of which is the total amount of tax credits that remained available for award within the category as of October 1, less those awarded as set forth in paragraph (3), and the denominator of which is the total amount of tax credits applied for by all business firms under this subsection.

(5) Notwithstanding a temporary increase in maximum tax credits available under this subsection, the limitations set forth in subsections (a), (a.1), (c) and (d) relating to the maximum amount of tax credits a business firm can receive during a year for contributions to a category of scholarship organizations, opportunity scholarship organizations or pre-kindergarten scholarship organizations shall be reinstated for all applications accepted by the department on or after December 1 of the fiscal year.

(j) Reallocation of tax credits.—

(1) Beginning on January 1 of any fiscal year, if any tax credits authorized under this article for contributions to any of the categories

of scholarship organizations, opportunity scholarship organizations or pre-kindergarten scholarship organizations remain unawarded, such unawarded tax credits may be reallocated to any of the categories of scholarship organizations, opportunity scholarship organizations or pre-kindergarten scholarship organizations for which all available tax credits have been awarded. The department shall, within ten business days, inform each business firm on the waiting list maintained by the department under subsection (h) that tax credits remain available under another category for which the business firm has not yet applied. If a business firm notified under this paragraph elects, the department shall reallocate available tax credits for award to the business firm in the business firm's preferred tax credit category, notwithstanding the limitations contained in section 1706-F(a). The amount of tax credits to be awarded to a business firm under this paragraph shall not exceed the amount of tax credits available for reallocation or the maximum amount of tax credits for which a business firm is eligible under subsections (a), (a.1), (c) and (d). Each business firm shall have ten business days from the date of the department's notice to elect a reallocation of tax credits under this paragraph. The department shall award tax credits on a first-come, first-served basis.

(2) After the department has awarded tax credits under paragraph (1), the department shall accept new applications for reallocation of tax credits from any of the categories of scholarship organizations, opportunity scholarship organizations or pre-kindergarten scholarship organizations for which tax credits remain available to the applicant's preferred category of scholarship organizations, opportunity scholarship organizations or pre-kindergarten scholarship organizations for which all available tax credits have been awarded, notwithstanding any limitations contained in section 1706-F(a). The amount of tax credits to be awarded to a business firm under this paragraph shall not exceed the amount of tax credits available for reallocation or the maximum amount of tax credits for which a business firm is eligible under subsections (a), (a.1), (c) and (d). The department shall award tax credits on a first-come, first-served basis.

(3) No tax credits shall be awarded under this subsection until the department has completed the award of tax credits for applications made under subsection (i).

(4) The department shall not reallocate tax credits from any of the categories of scholarship organizations, opportunity scholarship organizations or pre-kindergarten scholarship organizations to the category of educational improvement organizations.

(5) Subsections (b) and (g) shall not apply to an application for reallocation of tax credits under this subsection.

Section 1706-F. Limitations.

(a) Amount.—

(1) The total aggregate amount of all tax credits approved for contributions from business firms to scholarship organizations, educational improvement organizations and pre-kindergarten scholarship organizations shall not exceed \$100,000,000 in a fiscal year.

(i) No less than \$60,000,000 of the total aggregate amount shall be used to provide tax credits for contributions from business firms to scholarship organizations.

(ii) No less than \$30,000,000 of the total aggregate amount shall be used to provide tax credits for contributions from business firms to educational improvement organizations.

[(2) The following apply to specific fiscal years:

(i) For fiscal years 2004-2005, 2005-2006 and 2006-2007, the total aggregate amount of all tax credits approved for contributions from business firms to pre-kindergarten scholarship programs shall not exceed \$5,000,000 in a fiscal year.

(ii) For fiscal years 2007-2008, 2008-2009, 2009-2010, 2010-2011 and 2011-2012, the]

(iii) The total aggregate amount of all tax credits approved for contributions from business firms to pre-kindergarten scholarship [programs] organizations shall not exceed [\$8,000,000] \$10,000,000 in a fiscal year.

[(iii) For fiscal year 2012-2013 and each fiscal year thereafter, the]

(2) The total aggregate amount of all tax credits approved for contributions from business firms to [pre-kindergarten scholarship programs] opportunity scholarship organizations shall not exceed [\$10,000,000] \$50,000,000 in a fiscal year.

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

(c) Tax liability.—

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

(2) In the case of a credit granted to a pass-through entity which elects to **[transfer] distribute** the credit according to section 1705-F(e), a tax credit granted for any one taxable year and **[transferred] distributed** to a shareholder, member or partner may not exceed the tax liability of the shareholder, member or partner.

(d) Use.—A tax credit not used by the applicant in the taxable year the contribution was made or in the year designated by the shareholder, member or partner to whom the credit was transferred under section 1705-F(e) may not be carried forward or carried back and is not refundable or transferable.

(e) Nontaxable income.—A scholarship **from any category of organization** received by an eligible student or eligible pre-kindergarten student shall not be considered to be taxable income for the purposes of Article III.

(f) Financial assistance.—A scholarship from any category of organization received by an eligible student or eligible pre-kindergarten student shall not constitute an appropriation or financial assistance to the school attended by the recipient.

Section 7. Section 1707-F of the act, added October 9, 2009 (P.L.451, No.48), is amended to read:

Section 1707-F. Lists.

The Department of Revenue shall provide a list of all scholarship organizations, pre-kindergarten scholarship organizations [and], educational improvement organizations *and opportunity scholarship organizations* receiving contributions from business firms granted a tax credit under this article to the General Assembly by June 30th of each year.

Section 8. The act is amended by adding sections to read:

Section 1709-F. Opportunity scholarships.

(a) Notice.—By February 1 of each year, the department shall provide all opportunity scholarship organizations with a list of the low-achieving schools located within each school district.

(b) Award.—An opportunity scholarship organization may award an opportunity scholarship to an applicant who resides within the attendance boundary of a low-achieving school to attend a participating public school or a participating nonpublic school selected by the parent of the applicant. If an applicant who received an opportunity scholarship for the prior school year resides within the attendance boundary of a school that was removed from the list of low-achieving schools provided by the department under subsection (a), the applicant may receive an opportunity scholarship. The opportunity scholarship may be for each year of enrollment in a participating public school or participating nonpublic school for up to the lesser of five years or until completion of grade 12, provided the applicant otherwise remains eligible. In awarding scholarships, an opportunity scholarship organization shall give preference to any of the following:

(1) An applicant who received an opportunity scholarship for the prior school year.

(2) An applicant of a household with a household income that does not exceed 185% of the Federal poverty level for the school year preceding the school year for which the application is being made.

(3) An applicant of a household with a household income that does not exceed 185% of the Federal poverty level for the school year preceding the school year for which the application is being made and who resides within any of the following:

(i) A first class school district.

(ii) A school district designated as a financial recovery school district under Article VI-A of the Public School Code of 1949 for the year for which the award is made.

(c) Home schooling.—An opportunity scholarship organization shall not award an opportunity scholarship to an applicant for enrollment in a home education program under section 1327.1 of the Public School Code of 1949.

(d) Funding.—The aggregate amount of opportunity scholarships shall not exceed the aggregate amount of contributions made by business firms to the opportunity scholarship organization.

(e) Amount.—

(1) The maximum amount of an opportunity scholarship awarded to an applicant without a disability shall be \$8,500.

(2) The maximum amount of an opportunity scholarship awarded to an applicant with a disability shall be \$15,000.

(3) *In no case shall the combined amount of the opportunity scholarship awarded to a recipient and any additional financial assistance provided to the recipient exceed the tuition rate and school-related fees for the participating public school or participating nonpublic school that the recipient will attend.*

Section 1710-F. Low-achieving schools.

(a) *List of low-achieving schools.—By February 1 of each year, the Department of Education shall publish on the Department of Education's publicly accessible Internet website and in the Pennsylvania Bulletin a list of the low-achieving schools for the following school year.*

(b) *Notice.—By February 1 of each year, the Department of Education shall notify every school district identified as having at least one low-achieving school of such identification and shall furnish the school district with a list of the low-achieving schools located within the school district.*

(c) *Publication.—Within 15 days of receipt of a notification under subsection (b), a school district shall post on the district's publicly accessible Internet website notice of all of the following:*

(1) *A description of the opportunity scholarship program.*

(2) *Instructions for applying for an opportunity scholarship.*

(3) *A list of schools in the school district that have been designated by the Department of Education as low-achieving schools.*

(4) *Notice that a parent must directly contact a school district of a participating public school or a participating nonpublic school if the parent seeks to enroll the student in the opportunity scholarship program.*

(d) *Notification to parents.—*

(1) *Within 15 days of receipt of a notification under subsection (b), a school district shall notify the parents of each student who is currently attending or residing within the attendance boundary of a low-achieving school during the school year of the school's designation.*

(2) *Upon registration of a kindergarten student, a school district shall notify the parents of the kindergarten student that the student will be assigned to a low-achieving school during the school year of the school's designation.*

(3) *The notice shall be in a form provided by the Department of Education and shall provide the following information regarding the opportunity scholarship program:*

(i) *A description of the opportunity scholarship program.*

(ii) *Instructions for obtaining information about applying for an opportunity scholarship under the opportunity scholarship program.*

(iii) *Notice of the parent's responsibilities with regard to applying to a school district of a participating public school or a participating nonpublic school if the parent seeks to enroll the student in the opportunity scholarship program.*

(e) *Average daily membership.—*

(1) *Notwithstanding any other provision of law to the contrary, a recipient who was enrolled in the recipient's resident school district or in a charter school, regional charter school or cyber charter school*

when the recipient first received an opportunity scholarship shall continue to be counted in the average daily membership of the school district for a period of one year after enrolling in a participating public school or a participating nonpublic school.

(2) During the year referenced in paragraph (1) and each school year thereafter, a school district of a participating public school in which the recipient is enrolled shall not include the recipient in the school district's average daily membership.

Section 1711-F. School participation in program.

(a) Election.—

(1) By February 15 of each year, a nonpublic school may elect to participate in the opportunity scholarship program for the following school year.

(2) By February 15 of each year, a school district may elect to participate in the opportunity scholarship program for the following school year.

(b) Notice.—

(1) A school district or nonpublic school that elects to participate under subsection (a) must notify the Department of Education of the district's or nonpublic school's intent to participate.

(2) For a school district, the notice under paragraph (1) must be submitted on a form developed by the Department of Education and shall specify all of the following:

(i) Each school within the school district which the school district intends to make a participating public school.

(ii) The amount of tuition and school-related fees attributable to each available seat. The amount under this subparagraph shall not exceed the amount calculated under section 2561 of the Public School Code of 1949.

(3) For a nonpublic school, the notice under paragraph (1) must be submitted on a form developed by the Department of Education and shall specify the amount of tuition and school-related fees attributable to an available seat.

(c) Tuition rates.—

(1) No school district of a participating public school or participating nonpublic school may charge a recipient a higher tuition rate or school-related fee than the school district of the participating public school or participating nonpublic school would have charged to a similarly situated student who is not receiving an opportunity scholarship.

(2) Notwithstanding the provisions of section 2561 of the Public School Code of 1949, a school district of a participating public school may charge a recipient a tuition rate that is lower than that charged to students who are not recipients of opportunity scholarships.

(d) Participating public school criteria.—*The following criteria apply to a participating public school:*

(1) Except as otherwise provided in this article, a school district shall enroll students in a participating public school on a lottery basis from a pool of recipients who meet the application deadline set by the

Department of Education until the participating public school fills the school's available seats. The pool may not include a recipient who:

(i) Has been expelled or is in the process of being expelled under section 1317.2 or 1318 of the Public School Code of 1949 and applicable regulations of the State Board of Education.

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

(2) The enrollment of recipients may not place the school district in violation of a valid and binding desegregation order.

(3) Priority shall be given to:

(i) An existing recipient.

(ii) A recipient who is a sibling of a student currently enrolled in the school district.

(e) Participating nonpublic school criteria.—The following criteria apply to a participating nonpublic school:

(1) The participating nonpublic school may not discriminate on a basis which is illegal under Federal or State laws applicable to nonpublic schools.

(2) The participating nonpublic school shall comply with section 1521 of the Public School Code of 1949.

(3) The participating nonpublic school or its representatives may not recruit a student for athletic purposes.

(f) Student rules, policies and procedures.—

(1) Prior to enrollment of a recipient, a school district of a participating public school or a participating nonpublic school shall inform the parent of a recipient of any and all rules, policies and procedures of the participating public school or participating nonpublic school, including any academic policies, disciplinary rules and administrative procedures of the participating public school or participating nonpublic school.

(2) Enrollment of a recipient in a participating public school or participating nonpublic school shall constitute acceptance of any rules, policies and procedures of the participating public school or participating nonpublic school.

(g) Transportation.—

(1) Transportation of recipients shall be provided under section 1361 of the Public School Code of 1949.

(2) Reimbursement shall be as follows:

(i) Transportation of a recipient attending a participating public school shall be subject to reimbursement under section 2541 of the Public School Code of 1949.

(ii) Transportation of a recipient attending a participating nonpublic school shall be subject to reimbursement under sections 2509.3 and 2541 of the Public School Code of 1949.

(h) Construction.—Nothing in this article shall be construed to:

(1) Prohibit a participating nonpublic school from limiting admission to a particular grade level, a single gender or areas of concentration of the participating nonpublic school, including mathematics, science and the arts.

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

Section 1712-F. Tuition grants by school districts.

(a) General rule.—The board of school directors of a school district may use funds received from the Commonwealth for educational purposes to establish a program of tuition grants to provide for the education of students who reside within the district and attend or will attend a public or nonpublic school on a tuition-paying basis.

(b) Nonpublic school grant amount.—For students who attend or will attend a nonpublic school, the grant amount for each student shall not exceed the amount of the per pupil State subsidy for basic education of the school district of residence.

(c) Average daily membership.—

(1) A student who receives a tuition grant under this section shall be included in the average daily membership for purposes of determining the school district of residence's basic education funding.

(2) A student who receives a grant under this section to attend a public school outside the school district awarding the tuition grant shall not be included in the average daily membership of the school district the student attends.

(d) Guidelines.—

(1) The board of school directors of a school district shall prepare guidelines on all the following:

(i) Establishment of an application form and approval process.

(ii) Standards for verification of the accuracy of application information.

(iii) Confirmation of attendance by a student who receives a tuition grant.

(iv) Restrictive endorsement of grant checks by parents to the school chosen by the parents.

(v) Pro rata refunds of grants for students who withdraw during the school year.

(vi) Repayment of refunded grants to the school district.

(vii) Reasonable deadline dates for submission of grant applications.

(2) The board of school directors of a school shall announce the award of grants no later than August 1 of the school year in which the grants will be utilized.

(3) Upon receipt of written confirmation of enrollment from the student's school of choice, grants shall be paid to the parents of a student by a check that may only be endorsed to the selected school.

(4) In the event a student is no longer enrolled prior to the completion of the school term, the school shall send written notice to the school district.

(e) Nontaxable.—Grants awarded to students under this section shall not:

(1) Be considered taxable income for purposes of a local taxing ordinance or for purposes of Article III.

(2) Constitute financial assistance or appropriations to the school attended by the student.

(f) Construction.—Nothing in this section shall be construed to empower the Commonwealth or a school district or any of their agencies or officers to do any of the following:

(1) Prescribe the course content or admissions criteria for any religiously affiliated school.

(2) Compel any private school to accept or enroll a student.

(3) Impose any additional requirements on any private school that are not otherwise authorized.

(4) Require any school to accept or retain a student if the school does not offer programs or is not structured or equipped with the necessary facilities to meet the special needs of the student or does not offer a particular program requested.

Section 1713-F. Original jurisdiction.

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

Section 9. Article XVII-G.1 heading and sections 1701-G.1, 1702-G.1, 1703-G.1, 1704-G.1, 1705-G.1, 1706-G.1 and 1707-G.1, of the act, added July 2, 2012 (P.L.751, No.85), are repealed:

[ARTICLE XVII-G.1

EDUCATIONAL OPPORTUNITY SCHOLARSHIP TAX CREDIT

Section 1701-G.1. Scope of article.

This article establishes the educational opportunity scholarship tax credit.

Section 1702-G.1. 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:

"Applicant." An eligible student who applies for a scholarship.

"Assessment." The Pennsylvania System of School Assessment test, the Keystone Exam, an equivalent local assessment or another test established by the State Board of Education to meet the requirements of section 2603-B(d)(10)(i) of the Public School Code of 1949 and required under the No Child Left Behind Act of 2001 (Public Law 107-110, 115

Stat. 1425) or its successor statute or any other test required to achieve other standards established by the Department of Education for the public school or school district under 22 Pa. Code § 403.3 (relating to single accountability system).

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

"Average daily membership." As defined in section 2501(3) of the Public School Code of 1949.

"Business firm." An entity authorized to do business in this Commonwealth and subject to a tax under Article XVI of the act of May 17, 1921 (P.L.682, No.284), known as The Insurance Company Law of 1921, or taxes imposed under Article III, IV, VI, VII, VIII, IX or XV. The term includes a pass-through entity.

"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.

"Elementary school." A school which is not a secondary school.

"Eligible student." A student or a student with a disability who:

(1) resides within the attendance boundary of a low-achieving school as of the first day of classes of the school year; and

(2) is a member of a household which has a household income no greater than the maximum annual household income allowance.

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

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

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

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

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

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

(5) Payments to reimburse actual expenses.

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

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

"Income allowance."

(1) The following shall apply:

(i) After June 30, 2012, and through June 30, 2013, \$12,000 for each dependent member of the household.

(ii) After June 30, 2013, and through June 30, 2014, \$15,000 for each dependent member of the household.

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

"Kindergarten." A one-year formal educational program that occurs during the school year immediately prior to first grade. The term includes a part-time and a full-time program.

"Low-achieving school." A public school that ranked in the lowest 15% of its designation as an elementary school or a secondary school based on combined mathematics and reading scores from the annual assessment administered in the previous school year and for which the Department of Education has posted results on its publicly accessible Internet website. The term does not include a charter school, cyber charter school or area vocational-technical school.

"Maximum annual household income allowance."

(1) Except as stated in paragraph (2) and subject to adjustment under paragraph (3), the sum of:

(i) Either:

(A) after June 30, 2012, and through June 30, 2013, not more than \$60,000; or

(B) after June 30, 2013, not more than \$75,000.

(ii) The applicable income allowance.

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

(i) the applicable amount under paragraph (1); by

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

Support Level	Support Level Factor
1	1.50
2	2.993

(3) Beginning July 1, 2014, the Department of Community and Economic Development shall annually adjust the income amounts under paragraphs (1) and (2) to reflect any upward changes in the Consumer Price Index for All Urban Consumers for the Pennsylvania, New Jersey, Delaware and Maryland area in the preceding 12 months and shall immediately submit the adjusted

amounts to the Legislative Reference Bureau for publication as a notice in the Pennsylvania Bulletin.

"Nonpublic school." A school which is a nonprofit organization and which is located in the Commonwealth. The term does not include a public school.

"Parent." An individual who:

- (1) is a resident of the Commonwealth; and
- (2) either:
 - (i) has legal custody or guardianship of a student; or
 - (ii) keeps in his home a student and supports the student gratis as if the student were a lineal descendant of the individual.

"Participating nonpublic school." A nonpublic school which notifies the Department of Education under section 1710-G.1 that it wishes to participate in the program.

"Participating public school." A public school in a school district which notifies the Department of Education under section 1710-G.1(b) that it wishes to participate in the program. The term shall not include a low-achieving school.

"Pass-through entity." A partnership as defined in section 301(n.0), a single-member limited liability company treated as a disregarded entity for Federal income tax purposes or a Pennsylvania S corporation as defined in section 301(n.1).

"Public School Code of 1949." The act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949.

"Program." The Educational Opportunity Scholarship Tax Credit Program established under this article.

"Recipient." An applicant who receives a scholarship.

"Scholarship." An award given to an applicant for the recipient to pay tuition and school-related fees necessary to attend a participating nonpublic school or a participating public school located in a school district which is not the recipient's school district of residence.

"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 cash receipts to a scholarship program.

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

"School." An elementary school or a 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." The age of an individual from the earliest admission age to a school's kindergarten or, when no kindergarten is provided, the

school's earliest admission age for beginners, until the end of the school year the individual attains 21 years of age or graduation from high school, whichever occurs first.

"School district of residence." The school district in which the student's primary domicile is located.

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

"Secondary school." A school with an eleventh grade.

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

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

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

(3) is a school for the blind or deaf receiving Commonwealth appropriations; or

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

"Student." An individual who meets all of the following:

(1) Is school age.

(2) Is a resident of this Commonwealth.

(3) Attends or is about to attend a school.

"Student with a disability." A student who meets all of the following:

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

(2) Needs special education and related services.

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

Support Level 1 - The student is not enrolled in a special education school.

Support Level 2 - The student is enrolled as a student in a special education school.

Section 1703-G.1. Qualification and application.

(a) Establishment.—The Educational Opportunity Scholarship Tax Credit Program is established. The program shall provide tax credits to entities that provide contributions to scholarship organizations. The scholarship organizations must enhance the educational opportunities available to students in this Commonwealth by providing scholarships to eligible students who reside within the attendance boundary of low-achieving schools to attend schools which are not low-achieving schools and which are not a public school within the school district of residence.

(b) Information.—In order to qualify under this article, a scholarship organization must submit information to the department that enables the department to confirm that the scholarship 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) Annual certification of eligibility.—By August 15, 2012, and by February 15, 2013, and each February 15 thereafter, a scholarship organization must certify to the department that the organization is eligible to participate in the program.

(d) Report.—

(1) A scholarship organization must agree to report the following information on a form provided by the department by September 1, 2013, and each September 1 thereafter:

(i) The total number of applications for scholarships received during the immediately preceding school year from eligible students in grades kindergarten through eight.

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

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

(iv) The total number of applications for scholarships received during the immediately preceding school year from eligible students in grades 9 through 12.

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

(vi) The total and average amounts of the scholarships awarded during the immediately preceding school year to eligible students in grades 9 through 12.

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

(viii) The number of scholarships awarded during the immediately preceding school year to applicants with a household income that does not exceed 185% of the Federal poverty level.

(ix) The total and average amounts of the scholarships awarded during the immediately preceding school year to applicants with a household income that does not exceed 185% of the Federal poverty level.

(x) The number of scholarships awarded during the immediately preceding school year to applicants with a household income that does not exceed 185% of the Federal poverty level and who reside within a first class school district.

(xi) The total and average amounts of the scholarships awarded during the immediately preceding school year to applicants with a household income that does not exceed 185% of the Federal poverty level and who reside within a first class school district.

(xii) The number of scholarships awarded during the immediately preceding school year to applicants with a household income that does not exceed 185% of the Federal poverty level and who reside within a school district with an average daily membership greater than 7,500 and that receives an advance of its basic education subsidy at any time.

(xiii) The total and average amounts of the scholarships awarded during the immediately preceding school year to applicants with a household income that does not exceed 185% of the Federal poverty level and who reside within a school district with an average daily membership greater than 7,500 and that receives an advance of its basic education subsidy at any time.

(xiv) The number of scholarships awarded during the immediately preceding school year to applicants with a household income that does not exceed 185% of the Federal poverty level and who reside within a school district that receives an advance of its basic education subsidy at any time and is either subject to a declaration of financial distress under section 691 of the Public School Code of 1949 or engaged in litigation against the Commonwealth in which the school district seeks financial assistance from the Commonwealth to allow the school district to continue to operate.

(xv) The total and average amounts of the scholarships awarded during the immediately preceding school year to applicants with a household income that does not exceed 185% of the Federal poverty level and who reside within a school district that receives an advance of its basic education subsidy at any time and is either subject to a declaration of financial distress under section 691 of the Public School Code of 1949 or is engaged in litigation against the Commonwealth in which the school district seeks financial assistance from the Commonwealth to allow the school district to continue to operate.

(xvi) The total number of scholarship applications processed and the amounts of any application fees charged either per scholarship application or in the aggregate through a third-party processor.

(xvii) The scholarship organization's Federal Form 990 or other Federal form indicating the tax status of the scholarship organization for Federal tax purposes, if any, and a copy of a compilation, review or audit of the scholarship organization's financial statements conducted by a certified public accounting firm.

(2) No later than May 1, 2013, and each May 1 thereafter, the department shall annually distribute such sample forms, together

with the forms on which the reports are required to be made, to each listed scholarship organization.

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

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

(f) Publication.—The department shall annually publish a list of each scholarship organization qualified under this section in the Pennsylvania Bulletin and shall post and update the list as necessary on the publicly accessible Internet website of the department.

Section 1704-G.1. Tax credit application.

(a) Scholarship organization.—A business firm shall apply to the department for a tax credit under section 1705-G.1. A business firm shall receive a tax credit under this article if the scholarship organization that receives the contribution appears on the list published under section 1703-G.1(f).

(b) 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 1706-G.1(a).

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

Section 1705-G.1. Tax credit.

(a) Scholarship organizations.—

(1) In accordance with section 1706-G.1(a), the Department of Revenue shall grant a tax credit against any tax due under Article XVI of the act of May 17, 1921 (P.L.682, No.284), known as The Insurance Company Law of 1921, or under Article III, IV, VI, VII, VIII, IX or XV to a business firm providing proof of a contribution to a scholarship 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.

(2) For the fiscal year 2012-2013, the tax credit shall not exceed \$400,000 annually per business firm for contributions made to scholarship organizations.

(3) For the fiscal years 2013-2014 and each fiscal year thereafter, the tax credit shall not exceed \$750,000 annually per business firm for contributions made to scholarship organizations.

(b) Additional amount.—

(1) 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 with the same amount of contribution for two consecutive tax years.

(2) The business firm must provide the written commitment under this subsection to the department at the time of application.

(c) Combination of tax credits.—

(1) A business firm may receive tax credits from the Department of Revenue in any tax year for any combination of contributions under subsection (a) or (b).

(2) In no case may a business firm receive tax credits in any tax year:

(i) in excess of \$400,000 for contributions under subsections (a) and (b) made during fiscal year 2012-2013; or

(ii) in excess of \$750,000 for contributions under subsections (a) and (b) made during fiscal year 2013-2014 or any fiscal year thereafter.

(d) Pass-through entity.—

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

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

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

(e) Restriction on applicability of credits.—No credits granted under this section shall be applied against any tax withheld by an employer from an employee under Article III.

(f) Time of application for credits.—

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

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

Section 1706-G.1. Tax credit limitations.

(a) Amount.—The total aggregate amount of all tax credits approved shall not exceed \$50,000,000 in a fiscal year.

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

(c) Tax liability.—

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

(2) In the case of a credit granted to a pass-through entity which elects to transfer the credit according to section 1705-G.1(d), a tax credit granted for any one taxable year and transferred to a shareholder, member or partner may not exceed the tax liability of the shareholder, member or partner.

(d) Use.—A tax credit not used by the applicant in the taxable year the contribution was made or in the year designated by the shareholder, member or partner to whom the credit was transferred under section 1705-G.1(d) 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.

Section 1707-G.1. Tax credit lists.

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

Section 10. Section 1708-G.1 of the act, amended or added July 2, 2012 (P.L.751, No.85) and July 9, 2013 (P.L.270, No.52), is repealed:

[Section 1708-G.1. Scholarships.

(a) Notice.—By August 15, 2012, and by February 1 of each year thereafter, the department shall provide all scholarship organizations with a list of the low-achieving schools located within each school district.

(b) Award.—A scholarship organization may award a scholarship to an applicant who resides within the attendance boundary of a low-achieving school to attend a participating public school or a participating nonpublic school selected by the parent of the applicant. If an applicant who received an educational opportunity scholarship under this article for the prior school year resides within the attendance boundary of a school that was removed from the list of low-achieving schools provided by the department under subsection (a), the applicant may receive an educational opportunity scholarship. The scholarship may be for each year of enrollment in a participating public school or participating nonpublic school for up to the lesser of five years or until completion of grade 12 provided the applicant otherwise remains eligible. In awarding scholarships, a scholarship organization shall give preference to any of the following:

(1) An applicant who received a scholarship for the prior school year.

(2) An applicant of a household with a household income that does not exceed 185% of the Federal poverty level for the school year preceding the school year for which the application is being made.

(3) An applicant of a household with a household income that does not exceed 185% of the Federal poverty level for the school year preceding the school year for which the application is being made and who resides within any of the following:

(i) a first class school district;

(ii) a school district with an average daily membership greater than 7,500 and that receives an advance of its basic education subsidy at any time; or

(iii) a school district that receives an advance of its basic education subsidy at any time and is either subject to a declaration of financial distress under section 691 of the Public School Code of 1949 or engaged in litigation against the Commonwealth in which the school district seeks financial assistance from the Commonwealth to allow the school district to continue to operate.

(c) Home schooling.—A scholarship organization shall not award a scholarship to an applicant for enrollment in a home education program under section 1327.1 of the Public School Code of 1949.

(d) Funding.—The aggregate amount of scholarships shall not exceed the aggregate amount of contributions made by business firms to the scholarship organization.

(e) Amount.—

(1) The maximum amount of a scholarship awarded to an applicant without a disability shall be \$8,500.

(2) The maximum amount of a scholarship awarded to an applicant with a disability shall be \$15,000.

(3) In no case shall the combined amount of the scholarship awarded to a recipient and any additional financial assistance provided to the recipient exceed the tuition rate and school-related fees for the participating public school or participating nonpublic school that the recipient will attend.

(f) Taxation.—A scholarship shall not be considered taxable income for purposes of Article III or a local taxing ordinance.

(g) Financial assistance.—A scholarship shall not constitute financial assistance or an appropriation to the participating public school or the participating nonpublic school attended by a recipient.]

Section 11. Sections 1709-G.1, 1710-G.1, 1711-G.1 and 1712-G.1 of the act, added July 2, 2012 (P.L.751, No.85), are repealed:

[Section 1709-G.1. Low-achieving schools.

(a) List of low-achieving schools.—By September 1, 2012, and by February 1 of each year thereafter, the Department of Education shall publish on its publicly accessible Internet website and in the Pennsylvania Bulletin a list of the low-achieving schools for the following school year.

(b) Notice.—By August 1, 2012, and by February 1 of each year thereafter, the Department of Education shall notify every school district identified as having at least one low-achieving school of its designation and shall furnish the school district with a list of the low-achieving schools located within the school district.

(c) Publication.—Within 15 days of receipt of a notification under subsection (b), a school district shall post on its publicly accessible Internet website notice of all of the following:

(1) A description of the program.

(2) Instructions for applying for a scholarship.

(3) A list of schools in the school district that have been designated by the Department of Education as low-achieving schools.

(4) Notice that a parent must contact directly a school district of a participating public school or a participating nonpublic school if the parent seeks to enroll the student in the program.

(d) Notification to parents.—

(1) Within 15 days of receipt of a notification under subsection (b), a school district shall notify the parents of each student who is currently attending or residing within the attendance boundary of a low-achieving school during the school year of the school's designation.

(2) Upon registration of a kindergarten student, a school district shall notify the parents of the kindergarten student that the student will be assigned to a low-achieving school during the school year of the school's designation.

(3) The notice shall be in a form provided by the Department of Education and shall provide the following information regarding the program:

(i) A description of the program.

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

(iii) Notice of the parent's responsibilities with regard to applying to a school district of a participating public school or a participating nonpublic school if the parent seeks to enroll the student in the program.

(e) Average daily membership.—

(1) Notwithstanding any other provision of law to the contrary, a recipient who was enrolled in the recipient's resident school district or in a charter school, regional charter school or cyber charter school when the recipient first received a scholarship shall continue to be counted in the average daily membership of the school district for a period of one year after enrolling in a participating public school or a participating nonpublic school.

(2) During the year referenced in paragraph (1) and each school year thereafter, a school district of a participating public school in which the recipient is enrolled shall not include the recipient in the school district's average daily membership.

School 1710-G.1. School participation in program.

(a) Election.—

(1) By August 15, 2012, and by February 15 of each year thereafter, a nonpublic school may elect to participate in the program for the following school year.

(2) By August 15, 2012, and by February 15 of each year thereafter, a school district may elect to participate in the program for the following school year.

(b) Notice.—

(1) A school district or nonpublic school that elects to participate under subsection (a) must notify the Department of Education of its intent to participate.

(2) For a school district, the notice under paragraph (1) must be submitted on a form developed by the Department of Education and shall specify all of the following:

(i) Each school within the school district which the school district intends to make a participating public school.

(ii) The amount of tuition and school-related fees attributable to each available seat. The amount under this subparagraph shall not exceed the amount calculated under section 2561 of the Public School Code of 1949.

(3) For a nonpublic school, the notice under paragraph (1) must be submitted on a form developed by the Department of Education and shall specify the amount of tuition and school-related fees attributable to an available seat.

(c) Tuition rates.—

(1) No school district of a participating public school or participating nonpublic school may charge a recipient a higher tuition rate or school-related fee than the participating public school or participating nonpublic school would have charged to a similarly situated student who is not receiving a scholarship.

(2) Notwithstanding the provisions of section 2561 of the Public School Code of 1949, a school district of a participating public school may charge a recipient a tuition rate that is lower than that charged to students who are not recipients of scholarships.

(d) Participating public school criteria.—The following criteria apply to a participating public school:

(1) Except as otherwise provided in this article, a school district shall enroll students in a participating public school on a lottery basis from a pool of recipients who meet the application deadline set by the Department of Education until the participating public school fills its available seats. The pool may not include a recipient who:

(i) has been expelled or is in the process of being expelled under section 1317.2 or 1318 of the Public School Code of 1949 and applicable regulations of the State Board of Education; or

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

(2) The enrollment of recipients may not place the school district in violation of a valid and binding desegregation order.

(3) Priority shall be given to:

(i) An existing recipient.

(ii) A recipient who is a sibling of a student currently enrolled in the school district.

(e) Participating nonpublic school criteria.—The following criteria apply to a participating nonpublic school:

(1) The participating nonpublic school may not discriminate on a basis which is illegal under Federal or State laws applicable to nonpublic schools.

(2) The participating nonpublic school shall comply with section 1521 of the Public School Code of 1949.

(3) The participating nonpublic school or its representatives may not recruit a student for athletic purposes.

(f) Student rules, policies and procedures.—

(1) Prior to enrollment of a recipient, a school district of a participating public school or a participating nonpublic school shall inform the parent of a recipient of any and all rules, policies and procedures of the participating public school or participating nonpublic school, including any academic policies, disciplinary rules and administrative procedures of the participating public school or participating nonpublic school.

(2) Enrollment of a recipient in a participating public school or participating nonpublic school shall constitute acceptance of any rules, policies and procedures of the participating public school or participating nonpublic school.

(g) Transportation.—

(1) Transportation of recipients shall be provided under section 1361 of the Public School Code of 1949.

(2) Reimbursement shall be as follows:

(i) Transportation of a recipient attending a participating public school shall be subject to reimbursement under section 2541 of the Public School Code of 1949.

(ii) Transportation of a recipient attending a participating nonpublic school shall be subject to reimbursement under sections 2509.3 and 2541 of the Public School Code of 1949.

(h) Construction.—Nothing in this article shall be construed to:

(1) Prohibit a participating nonpublic school from limiting admission to a particular grade level, a single gender or areas of concentration of the participating nonpublic school, including mathematics, science and the arts.

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

Section 1711-G.1. Tuition grants by school districts.

(a) General rule.—The board of school directors of a school district may use funds received from the Commonwealth for educational purposes to establish a program of tuition grants to provide for the education of students who reside within the district and attend or will attend a public or nonpublic school on a tuition-paying basis.

(b) Nonpublic school grant amount.—For students who attend or will attend a nonpublic school, the grant amount for each student shall not exceed the amount of the per pupil State subsidy for basic education of the school district of residence.

(c) Average daily membership.—

(1) A student who receives a tuition grant under this section shall be included in the average daily membership for purposes of determining the school district of residence's basic education funding.

(2) A student who receives a grant under this section to attend a public school outside the school district awarding the tuition grant shall not be included in the average daily membership of the school district the student attends.

(d) Guidelines.—

(1) The board of school directors of a school district shall prepare guidelines establishing an application form and approval process, standards for verification as to the accuracy of application information, confirmation of attendance by a student who receives a tuition grant, restrictive endorsement of grant checks by parents to the school chosen by the parents, pro rata refunds of grants for students who withdraw during the school year, repayment of refunded grants to the school district and reasonable deadline dates for submission of grant applications.

(2) The board of school directors of a school shall announce the award of grants no later than August 1 of the school year in which the grants will be utilized.

(3) Upon receipt of written confirmation of enrollment from the student's school of choice, grants shall be paid to the parents of a student by a check that may only be endorsed to the selected school.

(4) In the event a student is no longer enrolled prior to the completion of the school term, the school shall send written notice thereof to the school district.

(e) Nontaxable.—Grants awarded to students under this section shall not be considered taxable income for purposes of any local taxing ordinance or for purposes of Article III, nor shall such grants constitute financial assistance or appropriations to the school attended by the student.

(f) Construction.—Nothing in this section shall be construed to empower the Commonwealth or any school district or any of their agencies or officers to:

(1) prescribe the course content or admissions criteria for any religiously affiliated school;

(2) compel any private school to accept or enroll a student;

(3) impose any additional requirements on any private school that are not otherwise authorized; or

(4) require any school to accept or retain a student if the school does not offer programs or is not structured or equipped with the necessary facilities to meet the special needs of the student or does not offer a particular program requested.

Section 1712-G.1. Original jurisdiction.

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

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

Section 12. The definitions of "contracting authority" and "pilot zone" in section 1802-C of the act, added July 9, 2013 (P.L.270, No.52), are amended to read:

Section 1802-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:

* * *

"Contracting authority." An authority established under 53 Pa.C.S. Ch. 56 (relating to municipal authorities) by a city, *borough*, *township* or home rule county for the purpose of:

- (1) designating zones; and
- (2) engaging in the construction, including related site preparation and infrastructure, reconstruction or renovation of facilities.

* * *

"Pilot zone." An area of not more than 130 acres designated by the *contracting* authority following application and approval by the Department of Community and Economic Development, the office and the department which will provide economic development and job creation within a township or borough, with a population of at least 7,000 based on the most recent Federal decennial census.

* * *

Section 12.1. Section 1803-C of the act, added July 9, 2013 (P.L.270, No.52), is amended to read:

Section 1803-C. Establishment of contracting authority.

(a) **[Cities] Authorization.**—Except as set forth in subsection (b), a city, *borough or township* may establish a contracting authority to designate a zone under this article.

(b) **Distressed cities.**—A city that is a distressed city under the act of July 10, 1987 (P.L.246, No.47), known as the Municipalities Financial Recovery Act, and is located in a home rule county may not establish a contracting authority under this article.

(c) **Counties.**—The home rule county where a distressed city under the Municipalities Financial Recovery Act is located may establish a contracting authority to designate a zone under this article within the distressed city.

Section 13. This act shall take effect immediately.

APPROVED—The 31st day of October, A.D. 2014

TOM CORBETT