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SENATE BILL 31

50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012

INTRODUCED BY

Gerald Ortiz y Pino

AN ACT

RELATING TO TAXATION; ENACTING THE SPECIAL NEEDS STUDENT SCHOLARSHIP ACT; PROVIDING FOR TUITION SCHOLARSHIP ORGANIZATIONS TO GRANT EDUCATIONAL SCHOLARSHIPS TO SPECIAL NEEDS STUDENTS TO ATTEND CERTAIN SCHOOLS; CREATING INCOME TAX AND CORPORATE INCOME TAX CREDITS FOR CONTRIBUTIONS TO TUITION SCHOLARSHIP ORGANIZATIONS THAT PROVIDE EDUCATIONAL SCHOLARSHIPS FOR SPECIAL NEEDS STUDENTS TO ATTEND CERTAIN SCHOOLS OF THE STUDENT'S PARENTS' CHOICE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through 5 of this act may be cited as the "Special Needs Student Scholarship Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the Special Needs Student Scholarship Act:

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1 A. "certification document" means the document
2 issued by the department to an organization verifying that the
3 organization is a tuition scholarship organization and
4 contributions to that organization for special needs student
5 scholarships may be claimed as a special needs student
6 scholarship tax credit;

7 B. "contribution receipt" means a document
8 developed by the taxation and revenue department pursuant to
9 the Special Needs Student Scholarship Act and provided to a
10 tuition scholarship organization that in turn provides the
11 document to an individual or corporate contributor that is a
12 taxpayer that intends to claim a special needs student
13 scholarship tax credit as a receipt for a contribution to the
14 tuition scholarship organization;

15 C. "department" means the public education
16 department;

17 D. "educational scholarship" means a tuition grant
18 or other grant of funds to a special needs student to cover all
19 or part of the costs of that student at a qualified school,
20 including transportation costs;

21 E. "eligible student" means a special needs student
22 who attended a public school for the semester prior to first
23 receiving an educational scholarship pursuant to the Special
24 Needs Student Scholarship Act;

25 F. "parent" means a guardian, custodian or other

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1 person with authority to act on behalf of a child;

2 G. "qualified school" means a public or nonpublic
3 elementary, middle or secondary school located in New Mexico to
4 which a parent has chosen to send a special needs student;

5 H. "relative" means a person related by affinity or
6 consanguinity to the third degree;

7 I. "special needs student" means a student who has
8 or is eligible to have an individual education plan as defined
9 in Section 1401 of the federal Individuals with Disabilities
10 Education Act of 2004 or a plan created pursuant to Section 504
11 of the federal Rehabilitation Act of 1973 or who is living in
12 foster care;

13 J. "special needs student scholarship tax credit"
14 means the special needs student scholarship income tax credit
15 provided in the Income Tax Act and the special needs student
16 scholarship corporate income tax credit provided in the
17 Corporate Income and Franchise Tax Act;

18 K. "tuition grant" means a grant of funds for the
19 purpose of covering the costs of tuition for a qualified
20 school; and

21 L. "tuition scholarship organization" means an
22 organization that provides educational scholarships to students
23 attending qualified schools of their parents' choice and that
24 meets the criteria established in the Special Needs Student
25 Scholarship Act.

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1 SECTION 3. ~~[NEW MATERIAL]~~ TUITION SCHOLARSHIP

2 ORGANIZATION--CERTIFICATION.--

3 A. An organization may seek certification from the
4 department as a tuition scholarship organization by submitting
5 an application for certification to the department.

6 B. To be certified as a tuition scholarship
7 organization by the department, the organization shall provide
8 documentation as deemed appropriate by the department to verify
9 that:

10 (1) the tuition scholarship organization has
11 been granted an exemption from federal income tax as an
12 organization described in Section 501(c)(3) of the federal
13 Internal Revenue Code of 1986;

14 (2) the tuition scholarship organization has
15 awarded or intends to award educational scholarships to special
16 needs students who are attending or plan to attend qualified
17 schools;

18 (3) the scholarships are funded from
19 contributions that the tuition scholarship organization has
20 received in or prior to the current calendar year or
21 anticipates receiving during the remainder of the calendar year
22 and:

23 (a) at least ninety percent of the
24 contributions received during a calendar year for which the
25 tuition scholarship organization issues a contribution receipt

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1 to an individual or corporate taxpayer for purposes of
2 obtaining a special needs student scholarship tax credit is
3 awarded by the organization as educational scholarships and all
4 revenue from interest or investments is expended solely on
5 educational scholarships; and

6 (b) a scholarship award to an eligible
7 student shall not exceed eighty percent of the three-year
8 rolling average of the state equalization guarantee
9 distribution for the respective level of an eligible student as
10 calculated for the associated program units;

11 (4) the tuition scholarship organization
12 distributes periodic scholarship payments as checks that are
13 issued to an eligible student's parent, that are mailed to the
14 qualified school in which the eligible student is enrolled and
15 that require the endorsement of the parent prior to deposit of
16 the check;

17 (5) educational scholarships awarded by the
18 tuition scholarship organization are portable during the school
19 year and can be used at any qualified school that accepts the
20 eligible student according to a parent's wishes; provided that
21 the scholarship shall be prorated between schools based on the
22 number of days attended at each school by the eligible student;

23 (6) criminal background checks on all of the
24 tuition scholarship organization's employees and board members
25 have been conducted by the organization, with the understanding

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1 that individuals who might reasonably pose a risk to the sound
2 fiscal management of the funds of the organization shall be
3 excluded from employment or governance, and all pertinent
4 findings on employees and board members have been provided to
5 the department for review and approval;

6 (7) the tuition scholarship organization has
7 in place systems to provide for financial accountability,
8 including independent annual audits that shall be submitted to
9 the department in the form of a financial information report
10 that complies with generally accepted accounting procedures as
11 specified by the department and is certified to be free of
12 material misstatements by the certified public accountant who
13 performed the audit; and

14 (8) the tuition scholarship organization is
15 financially viable and receives or is likely to receive
16 donations of fifty thousand dollars (\$50,000) or more during a
17 school year by filing with the department prior to the start of
18 the school year a surety bond payable to the state in an amount
19 equal to the aggregate amount of contributions expected to be
20 received during the school year.

21 SECTION 4. [NEW MATERIAL] TUITION SCHOLARSHIP
22 ORGANIZATION--DUTIES.--

23 A. No later than thirty days prior to the start of
24 a new school year or the start of a new semester, a tuition
25 scholarship organization shall provide to the department the

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1 names of eligible students who received scholarships, the
2 respective levels of the students that have special education
3 needs and the students' previous school district or charter
4 school affiliation. The tuition scholarship organization shall
5 provide verification that the eligible students have been
6 awarded a tuition scholarship and have enrolled in a public or
7 nonpublic school for the new school year or the new semester.

8 B. A tuition scholarship organization shall ensure
9 that a school participating in the tuition scholarship
10 organization's scholarship program certifies that the school:

11 (1) is in compliance with all health and
12 safety laws or rules that apply to schools;

13 (2) holds a valid occupancy permit as required
14 by applicable laws;

15 (3) does not discriminate in admissions on the
16 basis of race, color or national origin;

17 (4) provides academic accountability to
18 parents of the students in the program by regularly reporting
19 to the parent on the student's academic and developmental
20 progress;

21 (5) ensures that every school employee with
22 unsupervised access to students has undergone a background
23 check as described in Subsection B of Section 22-10A-5 NMSA
24 1978;

25 (6) has no paid staff or board members who are

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1 also staff or board members of the tuition scholarship
2 organization or who are relatives of the staff or board members
3 of the tuition scholarship organization; and

4 (7) is a qualified school and, if the school
5 has more applications for educational scholarships from
6 eligible students than positions available for students
7 receiving scholarships, the school fills the available
8 scholarship positions only by using a random selection process.

9 C. By June 1 of each year beginning in 2013, a
10 tuition scholarship organization shall report the following
11 information to the department and the taxation and revenue
12 department:

13 (1) the name and address of the tuition
14 scholarship organization;

15 (2) the total number and dollar amount of
16 contributions received for which contribution receipts were
17 issued during the calendar year ending on December 31 of the
18 prior year;

19 (3) the total number and dollar amount of all
20 educational scholarships awarded during the calendar year
21 ending on December 31 of the prior year; and

22 (4) the total number and dollar amount of
23 educational scholarships awarded to eligible students during
24 the calendar year ending on December 31 of the prior year.

25 D. A tuition scholarship organization shall:

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1 (1) provide to each individual and corporate
2 contributor of funds dedicated for educational scholarships a
3 contribution receipt that shall be completed according to
4 taxation and revenue department requirements;

5 (2) maintain a list by the sequential number
6 on the contribution receipt identifying to whom each copy is
7 issued, the amount and date of the contribution and any other
8 information deemed necessary by the taxation and revenue
9 department to allow the contributor to receive a special needs
10 student scholarship tax credit; and

11 (3) account for all copies of contribution
12 receipts damaged, destroyed, lost or otherwise unusable.

13 SECTION 5. [NEW MATERIAL] DEPARTMENT--DUTIES.--

14 A. The department shall administer the Special
15 Needs Student Scholarship Act.

16 B. The department shall:

17 (1) provide the name of each certified tuition
18 scholarship organization to the taxation and revenue department
19 by no later than thirty days after issuing the certification
20 document to the tuition scholarship organization;

21 (2) upon notification by the tuition
22 scholarship organization, calculate the associated program
23 units for an eligible student receiving an educational
24 scholarship that would have been generated under the funding
25 formula using the current year unit value and determine the

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1 dollar amount of that student's program cost, if that student
2 were to have enrolled in the student's previous school for the
3 new school year or the new semester;

4 (3) if an eligible student receiving an
5 educational scholarship withdraws prior to the start of a new
6 school year, deduct that student's program cost from the
7 student's previous school district or charter school state
8 equalization guarantee distribution allocation prior to
9 distribution;

10 (4) if an eligible student receiving an
11 educational scholarship withdraws between semesters, make a
12 prorated reduction in the school district's or charter school's
13 distribution for the remainder of the school year and not
14 distribute the funds attributed to the adjustments, which shall
15 remain undistributed and shall revert to the general fund at
16 the end of the fiscal year;

17 (5) engage an auditor to conduct a financial
18 and program audit of a tuition scholarship organization, at the
19 expense of the tuition scholarship organization, if there is
20 evidence of fraud or failure to comply with the Special Needs
21 Student Scholarship Act;

22 (6) deny, suspend or revoke the certification
23 of a tuition scholarship organization for purposes of the
24 special needs student scholarship tax credit if the department
25 determines that the organization has intentionally and

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1 substantially failed to comply with the requirements of the
2 Special Needs Student Scholarship Act; and

3 (7) notify the taxation and revenue department
4 if the certification of an organization as a tuition
5 scholarship organization is denied, suspended or revoked within
6 ten days of the denial, suspension or revocation.

7 SECTION 6. A new section of the Income Tax Act is enacted
8 to read:

9 "[NEW MATERIAL] SPECIAL NEEDS STUDENT SCHOLARSHIP INCOME
10 TAX CREDIT.--

11 A. A taxpayer who files a New Mexico income tax
12 return and is not a dependent of another taxpayer may claim,
13 and the department may approve, a credit against the income tax
14 liability of the taxpayer for a contribution made to a tuition
15 scholarship organization. The credit may be approved in an
16 amount equal to ninety percent of the total contributions made
17 by the taxpayer to a tuition scholarship organization for which
18 contribution receipts have been provided by that organization
19 during the taxable year but shall not exceed fifty percent of
20 the taxpayer's income tax liability for the taxable year. The
21 credit provided in this section may be referred to as the
22 "special needs student scholarship income tax credit".

23 B. The purpose of the special needs student
24 scholarship income tax credit is to encourage individuals and
25 businesses to contribute money to tuition scholarship

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1 organizations that provide scholarships for special needs
2 students to attend public or nonpublic schools that are chosen
3 by the students' parents.

4 C. To ensure that the department receives the
5 information needed to allow a special needs student scholarship
6 income tax credit, the department shall develop a contribution
7 receipt that requests all of the information needed by the
8 department to determine if a credit is due. The contribution
9 receipts shall be sequentially numbered, and a charge, not to
10 exceed fifty cents (\$.50) per numbered copy, may be charged by
11 the department to the tuition scholarship organization.

12 D. Upon receiving notice from the public education
13 department that an organization has been certified as a tuition
14 scholarship organization, the taxation and revenue department
15 shall provide sequentially numbered copies of contribution
16 receipts to a tuition scholarship organization to be
17 distributed by the tuition scholarship organization to its
18 contributors to indicate the recipient, date and value of a
19 contribution to the tuition scholarship organization and other
20 information required by the taxation and revenue department.

21 E. The department shall require a taxpayer claiming
22 the special needs student scholarship income tax credit to
23 submit the numbered copy of the contribution receipt from the
24 tuition scholarship organization to which the taxpayer
25 contributed money with the taxpayer's application for the

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1 credit provided by this section.

2 F. The special needs student scholarship income tax
3 credit shall not be allowed for a contribution that is included
4 for the taxable year in the taxpayer's itemized deductions, as
5 defined in Section 63 of the Internal Revenue Code.

6 G. A husband and wife who file separate returns for
7 a taxable year in which they could have filed a joint return
8 may each claim only one-half of the special needs student
9 scholarship income tax credit that would have been allowed on a
10 joint return.

11 H. A taxpayer who otherwise qualifies for and
12 claims a special needs student scholarship income tax credit
13 for a contribution made to a tuition scholarship organization
14 by a partnership or other business association of which the
15 taxpayer is a member may claim a credit only in proportion to
16 the taxpayer's interest in the partnership or business
17 association. The total credit claimed in the aggregate by all
18 members of the partnership or business association in a taxable
19 year with respect to a contribution made to a tuition
20 scholarship organization, including special needs student
21 scholarship corporate income tax credits claimed by a corporate
22 member of the partnership or business association, shall not
23 exceed the maximum credit that would have been allowable
24 pursuant to this section if claimed by a single taxpayer.

25 I. Any amount of the special needs student

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1 scholarship income tax credit allowed by the department that
2 exceeds fifty percent of the income tax liability of the
3 taxpayer in the taxable year in which the credit is first
4 claimed may be carried forward for three consecutive taxable
5 years.

6 J. The maximum annual aggregate of special needs
7 student scholarship income tax credits and special needs
8 student scholarship corporate income tax credits shall not
9 exceed five million dollars (\$5,000,000). An application for
10 the special needs student scholarship income tax credit or the
11 special needs student scholarship corporate income tax credit
12 shall be considered in the order in which the application is
13 received by the department. Any special needs student
14 scholarship income tax credit application or special needs
15 student scholarship corporate income tax credit application
16 that is unable to be taken in the year it is submitted due to
17 the aggregate maximum limit being met in any taxable year shall
18 be placed in a queue by the date on which the application was
19 received to be paid first in the subsequent taxable year before
20 the new applications for that taxable year are allowed.

21 K. The department shall compile a report annually
22 for the revenue stabilization and tax policy committee that
23 sets forth the number of taxpayers approved to receive special
24 needs student scholarship income tax credits, the aggregate
25 amount of credits approved and the average and median amounts

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1 of credits approved. The department shall determine every
2 three years beginning in 2015 whether the special needs student
3 scholarship income tax credit is performing the purpose for
4 which it was created.

5 L. A taxpayer that claims a special needs student
6 scholarship income tax credit pursuant to the Income Tax Act
7 shall not also claim a special needs student scholarship
8 corporate income tax credit pursuant to the Corporate Income
9 and Franchise Tax Act or any other similar tax credit for the
10 same contribution to a tuition scholarship organization. The
11 special needs student scholarship income tax credit shall be
12 applied to the taxpayer's tax liability before application of
13 any other tax credit claimed for the taxable year by the
14 taxpayer.

15 M. Acceptance of the special needs student
16 scholarship income tax credit is authorization to the
17 department to disclose the amount of the tax credit claimed by
18 the taxpayer as needed to report fully as required by this
19 section to the revenue stabilization and tax policy committee
20 of the legislature.

21 N. As used in this section:

22 (1) "contribution receipt" means the document
23 developed by the department and issued pursuant to the Special
24 Needs Student Scholarship Act by a tuition scholarship
25 organization to a contributor;

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1 (2) "parent" means a guardian, custodian or
2 other person with authority to act on behalf of a child;

3 (3) "special needs student" means a student
4 who has or is eligible to have an individual education plan as
5 defined in Section 1401 of the federal Individuals with
6 Disabilities Education Act of 2004 or a plan created pursuant
7 to Section 504 of the federal Rehabilitation Act of 1973 or who
8 is living in foster care; and

9 (4) "tuition scholarship organization" means
10 an organization that provides educational scholarships to
11 students attending qualified schools of their parents' choice
12 and that meets the requirements of the Special Needs Student
13 Scholarship Act."

14 SECTION 7. A new section of the Corporate Income and
15 Franchise Tax Act is enacted to read:

16 "[NEW MATERIAL] SPECIAL NEEDS STUDENT SCHOLARSHIP
17 CORPORATE INCOME TAX CREDIT.--

18 A. A taxpayer that files a New Mexico corporate
19 income tax return may claim, and the department may approve, a
20 credit against the corporate income tax liability of the
21 taxpayer for a contribution made to a tuition scholarship
22 organization. The credit may be approved in an amount equal to
23 ninety percent of the total contributions made by the taxpayer
24 to a tuition scholarship organization for which contribution
25 receipts have been provided by that organization during the

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1 taxable year but shall not exceed fifty percent of the
2 taxpayer's corporate income tax liability for the taxable year.
3 The credit provided in this section may be referred to as the
4 "special needs student scholarship corporate income tax
5 credit".

6 B. The purpose of the special needs student
7 scholarship corporate income tax credit is to encourage
8 corporations to contribute money to tuition scholarship
9 organizations that provide scholarships for special needs
10 students to attend public or nonpublic schools that are chosen
11 by the students' parents.

12 C. To ensure that the department receives the
13 information needed to allow a special needs student scholarship
14 corporate income tax credit, the department shall develop a
15 contribution receipt that requests all of the information
16 needed by the department to determine if a credit is due. The
17 contribution receipts shall be sequentially numbered, and a
18 charge, not to exceed fifty cents (\$.50) per numbered copy, may
19 be charged by the department to the tuition scholarship
20 organization.

21 D. Upon receiving notice from the public education
22 department that an organization has been certified as a tuition
23 scholarship organization, the taxation and revenue department
24 shall provide sequentially numbered copies of contribution
25 receipts to a tuition scholarship organization to be

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1 distributed by the tuition scholarship organization to its
2 contributors to indicate the recipient, date and value of a
3 contribution to the tuition scholarship organization and other
4 information required by the taxation and revenue department.

5 E. The department shall require a taxpayer claiming
6 the special needs scholarship corporate income tax credit to
7 submit the numbered copy of the certification document from the
8 tuition scholarship organization to which the taxpayer
9 contributed money with the taxpayer's application for the
10 credit provided by this section.

11 F. The special needs student scholarship corporate
12 income tax credit shall not be allowed for a contribution that
13 is included for the taxable year in the taxpayer's itemized
14 deductions, as defined in Section 63 of the Internal Revenue
15 Code.

16 G. Any amount of the special needs student
17 scholarship corporate income tax credit allowed by the
18 department that exceeds fifty percent of the corporate income
19 tax liability of the taxpayer in the taxable year in which the
20 credit is first claimed may be carried forward for three
21 consecutive taxable years.

22 H. The annual aggregate of special needs student
23 scholarship corporate income tax credits and special needs
24 student scholarship income tax credits shall not exceed five
25 million dollars (\$5,000,000). An application for the special

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1 needs student scholarship corporate income tax credit or the
2 special needs student scholarship income tax credit shall be
3 considered in the order in which the application is received by
4 the department. Any special needs student scholarship
5 corporate income tax credit application or special needs
6 student scholarship income tax credit application that is
7 unable to be taken in the year it is submitted due to the
8 aggregate maximum limit being met in any taxable year shall be
9 placed in a queue by the date on which the application was
10 received to be paid first in the subsequent taxable year before
11 the new applications for that taxable year are allowed.

12 I. The department shall compile a report annually
13 for the revenue stabilization and tax policy committee that
14 sets forth the number of taxpayers approved to receive special
15 needs student scholarship corporate income tax credits, the
16 aggregate amount of credits approved and the average and median
17 amounts of credits approved. The department shall determine
18 every three years beginning in 2015 whether the special needs
19 student scholarship corporate income tax credit is performing
20 the purpose for which it was created.

21 J. A taxpayer that claims a special needs student
22 scholarship corporate income tax credit pursuant to the
23 Corporate Income and Franchise Tax Act shall not also claim a
24 special needs student scholarship income tax credit pursuant to
25 the Income Tax Act or any other similar tax credit for the same

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1 contribution to a tuition scholarship organization. The
2 special needs student scholarship corporate income tax credit
3 shall be applied to the taxpayer's tax liability before
4 application of any other tax credit claimed for the taxable
5 year by the taxpayer.

6 K. Acceptance of the special needs student
7 scholarship corporate income tax credit is authorization to the
8 department to disclose the amount of the tax credit claimed by
9 the taxpayer as needed to report fully as required by this
10 section to the revenue stabilization and tax policy committee
11 of the legislature.

12 L. As used in this section:

13 (1) "contribution receipt" means the document
14 issued pursuant to the Special Needs Student Scholarship Act by
15 a tuition scholarship organization to a contributor;

16 (2) "parent" means a guardian, custodian or
17 other person with authority to act on behalf of a child;

18 (3) "special needs student" means a student
19 who has or is eligible to have an individual education plan as
20 defined in Section 1401 of the Individuals with Disabilities
21 Education Act of 2004 or a plan created pursuant to Section 504
22 of the federal Rehabilitation Act of 1973 or who is living in
23 foster care; and

24 (4) "tuition scholarship organization" means
25 an organization that provides educational scholarships to

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1 students attending qualified schools of their parents' choice
2 pursuant to the Special Needs Student Scholarship Act."

3 SECTION 8. Section 22-8-12.1 NMSA 1978 (being Laws 1978,
4 Chapter 128, Section 5, as amended) is amended to read:

5 "22-8-12.1. MEMBERSHIP PROJECTIONS AND BUDGET
6 REQUESTS.--

7 A. Each local school board or governing body of a
8 state-chartered charter school shall submit annually, on or
9 before October 15, to the department:

10 (1) an estimate for the succeeding fiscal year
11 of:

12 (a) the membership of qualified students
13 to be enrolled in the basic program;

14 (b) the full-time-equivalent membership
15 of students to be enrolled in approved early childhood
16 education programs; and

17 (c) the membership of students to be
18 enrolled in approved special education programs, adjusted for
19 deductions due to student participation in the scholarship
20 programs of the Special Needs Student Scholarship Act;

21 (2) all other information necessary to
22 calculate program costs; and

23 (3) any other information related to the
24 financial needs of the school district or state-chartered
25 charter school as may be requested by the department.

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1 B. All information requested pursuant to Subsection
2 A of this section shall be submitted on forms prescribed and
3 furnished by the department and shall comply with the
4 department's rules and procedures.

5 C. The department shall:

6 (1) review the financial needs of each school
7 district or state-chartered charter school for the succeeding
8 fiscal year; and

9 (2) submit annually, on or before November 30,
10 to the secretary of finance and administration the
11 recommendations of the department for:

12 (a) amendments to the public school
13 finance formula;

14 (b) appropriations for the succeeding
15 fiscal year to the public school fund for inclusion in the
16 executive budget document; and

17 (c) appropriations for the succeeding
18 fiscal year for pupil transportation and instructional
19 materials."

20 **SECTION 9. APPLICABILITY.**--The provisions of Sections 6
21 and 7 of this act apply to taxable years beginning on or after
22 January 1, 2013 but before January 1, 2017.

23 **SECTION 10. EFFECTIVE DATE.**--

24 A. The effective date of the provisions of Sections
25 1 through 5 and 8 of this act is July 1, 2012.

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B. The effective date of the provisions of Sections
6 and 7 of this act is January 1, 2013.

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