

## SENATE BILL 373

Q3

8lr1864

By: **Senators DeGrange, Brinkley, Currie, Della, Dyson, King, Klausmeier, McFadden, Miller, Munson, Peters, Robey, Stoltzfus, and Stone**

Introduced and read first time: January 30, 2008

Assigned to: Budget and Taxation

A BILL ENTITLED

## 1 AN ACT concerning

## **2 Building Opportunities for All Students and Teachers (BOAST) in Maryland 3 Tax Credit**

4 FOR the purpose of allowing a credit against the State income tax for contributions  
5 made to an eligible educational scholarship organization or an eligible  
6 innovative educational organization; requiring the State Department of  
7 Education to administer the tax credit; requiring an entity to submit an  
8 application to be an eligible educational scholarship organization or an eligible  
9 innovative educational organization by a certain date each year; requiring an  
10 eligible educational scholarship organization or an eligible innovative  
11 educational organization to meet certain qualifications; requiring a business  
12 entity to submit a certain application within a certain time period and to make  
13 a contribution to an eligible educational scholarship organization or an eligible  
14 innovative educational organization and to provide certain notice within a  
15 certain time period; requiring the Department to adopt certain regulations  
16 jointly with the Comptroller; requiring the Department to approve certain  
17 applications within a certain time period and in a certain manner; requiring the  
18 Department to rescind certain tax credit certificates if certain notice is not  
19 provided within a certain time period; providing limits on the amount of certain  
20 tax credits and the aggregate amount of tax credits that may be approved by the  
21 Department in a calendar year; providing that certain unused tax credits may  
22 not be carried forward; requiring the Department to publish and update a  
23 certain list in a certain manner each year and to submit a certain report by a  
24 certain date each year; requiring a certain addition modification under the  
25 Maryland income tax if a certain tax credit is claimed; defining certain terms;  
26 providing for the application of this Act; and generally relating to a State  
27 income tax credit for contributions made to an eligible educational scholarship  
28 organization or an eligible innovative educational organization.

29 BY repealing and reenacting, without amendments,

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**EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.**

[Brackets] indicate matter deleted from existing law.



Article – Tax – General  
Section 10–205(a) and 10–306(a)  
Annotated Code of Maryland  
(2004 Replacement Volume and 2006 Supplement)

BY adding to  
Article – Tax – General  
Section 10–205(j), 10–306(f), and 10–726  
Annotated Code of Maryland  
(2004 Replacement Volume and 2007 Supplement)

10 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
11 MARYLAND, That the Laws of Maryland read as follows:

## Article – Tax – General

13 10-205.

17 (J) THE ADDITION UNDER SUBSECTION (A) OF THIS SECTION INCLUDES  
18 THE AMOUNT OF A CREDIT CLAIMED UNDER § 10-726 OF THIS TITLE FOR A  
19 CONTRIBUTION MADE TO AN ELIGIBLE EDUCATIONAL SCHOLARSHIP  
20 ORGANIZATION OR AN ELIGIBLE INNOVATIVE EDUCATIONAL ORGANIZATION.

21 10-306.

25 (F) THE ADDITION UNDER SUBSECTION (A) OF THIS SECTION INCLUDES  
26 THE AMOUNT OF A CREDIT CLAIMED UNDER § 10-726 OF THIS TITLE FOR A  
27 CONTRIBUTION MADE TO AN ELIGIBLE EDUCATIONAL SCHOLARSHIP  
28 ORGANIZATION OR AN ELIGIBLE INNOVATIVE EDUCATIONAL ORGANIZATION.

29 10-726.

30 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE  
31 MEANINGS INDICATED

32 (2) "BUSINESS ENTITY" MEANS:

1 (I) A PERSON CONDUCTING OR OPERATING A TRADE OR  
2 BUSINESS IN MARYLAND; OR

6 (3) "CONTRIBUTION" MEANS A MONETARY DONATION.

7 (4) "DEPARTMENT" MEANS THE STATE DEPARTMENT OF  
8 EDUCATION.

11 (I) IS EXEMPT FROM FEDERAL TAXATION UNDER §  
12 501(C)(3) OF THE INTERNAL REVENUE CODE;

13 (II) PROVIDES TUITION SCHOLARSHIPS TO:

21 (III) MEETS THE REQUIREMENTS OF SUBSECTION (C)(1) OF  
22 THIS SECTION.

25 (I) IS EXEMPT FROM FEDERAL TAXATION UNDER §  
26 501(C)(3) OF THE INTERNAL REVENUE CODE;

**27 (III) PROVIDES GRANTS, SERVICES, OR PROGRAMS FOR:**

1 ACADEMIC PROGRAM OF A PUBLIC SCHOOL IN ORDER TO ACHIEVE THE GOALS  
2 OF THE BRIDGE TO EXCELLENCE IN PUBLIC SCHOOLS ACT OF 2002; OR

3 2. TEACHERS EMPLOYED BY PUBLIC SCHOOLS IN  
4 THE STATE FOR THE PURPOSE OF MEETING OR RETAINING STATE  
5 CERTIFICATION OR CERTIFICATION BY THE NATIONAL BOARD FOR  
6 PROFESSIONAL TEACHING STANDARDS; AND

7 (III) MEETS THE REQUIREMENTS OF SUBSECTION (C)(2) OF  
8 THIS SECTION.

9 (7) "ELIGIBLE NONPUBLIC SCHOOL" MEANS A KINDERGARTEN,  
10 ELEMENTARY, OR SECONDARY SCHOOL THAT:

11 (I) HOLDS A CERTIFICATE OF APPROVAL FROM OR IS  
12 REGISTERED WITH THE STATE BOARD OF EDUCATION;

13 (II) DOES NOT CHARGE TUITION THAT IS GREATER THAN  
14 THE STATEWIDE AVERAGE PER PUPIL EXPENDITURE BY THE LOCAL EDUCATION  
15 AGENCIES CALCULATED BY THE DEPARTMENT WITH EXCEPTIONS FOR SPECIAL  
16 EDUCATION STUDENTS DETERMINED BY THE DEPARTMENT TO BE  
17 APPROPRIATE; AND

18 (III) COMPLIES WITH TITLE VI OF THE CIVIL RIGHTS ACT  
19 OF 1964, AS AMENDED.

20 (B) (1) SUBJECT TO THE PROVISIONS OF THIS SUBSECTION, A  
21 BUSINESS ENTITY MAY CLAIM A CREDIT AGAINST THE STATE INCOME TAX IN AN  
22 AMOUNT EQUAL TO 75% OF A CONTRIBUTION MADE TO AN ELIGIBLE  
23 EDUCATIONAL SCHOLARSHIP ORGANIZATION OR AN ELIGIBLE INNOVATIVE  
24 EDUCATIONAL ORGANIZATION.

25 (2) A CREDIT CLAIMED BY A BUSINESS ENTITY UNDER THIS  
26 SECTION MAY NOT EXCEED \$200,000 ANNUALLY.

27 (C) (1) TO QUALIFY AS AN ELIGIBLE EDUCATIONAL SCHOLARSHIP  
28 ORGANIZATION, AN ENTITY SHALL:

29 (I) APPLY TO THE DEPARTMENT ON OR BEFORE  
30 DECEMBER 1 OF EACH YEAR;

31 (II) PROVIDE TUITION SCHOLARSHIPS TO STUDENTS  
32 ATTENDING ELIGIBLE NONPUBLIC SCHOOLS OR TEACHERS WORKING AT  
33 ELIGIBLE NONPUBLIC SCHOOLS;

**(III) CONTRIBUTE OR IRREVOCABLY ENCUMBER:**

1. AT LEAST 85% OF ANNUAL CASH RECEIPTS RECEIVED AS THE RESULT OF CONTRIBUTIONS APPROVED FOR TAX CREDITS UNDER THIS SECTION TOWARD TUITION SCHOLARSHIPS FOR STUDENTS OR TEACHERS AT ELIGIBLE NONPUBLIC SCHOOLS AS PROVIDED UNDER THIS SECTION; AND

**2. NO MORE THAN 25% OF ANNUAL CASH RECEIPTS  
RECEIVED AS THE RESULT OF CONTRIBUTIONS APPROVED FOR TAX CREDITS  
UNDER THIS SECTION FOR GRANTS TO TEACHERS EMPLOYED AT ELIGIBLE  
NONPUBLIC SCHOOLS UNDER THIS SECTION:**

**(IV) PROVIDE TUITION SCHOLARSHIPS TO AT LEAST FOUR DIFFERENT ELIGIBLE NONPUBLIC SCHOOLS IN EACH CALENDAR YEAR;**

(v) PROVIDE SCHOLARSHIPS ON A PRIORITY BASIS FIRST TO STUDENT APPLICANTS WHO ARE ELIGIBLE FOR FREE AND REDUCED PRICE MEALS BASED ON ELIGIBILITY REQUIREMENTS ESTABLISHED BY THE UNITED STATES DEPARTMENT OF AGRICULTURE AND THEN TO OTHER STUDENT APPLICANTS BASED ON FINANCIAL NEED;

**(vi) SUBMIT TO THE DEPARTMENT THE APPLICATION AND REVIEW PROCESS FOR APPROVAL OF TUITION SCHOLARSHIPS; AND**

(VII) ON OR BEFORE JANUARY 1 OF EACH YEAR, SUBMIT  
VERIFICATION TO THE DEPARTMENT THAT ALL REQUIREMENTS FOR  
ELIGIBILITY UNDER THIS PARAGRAPH HAVE BEEN MET IN THE PRIOR  
CALENDAR YEAR.

**(2) TO QUALIFY AS AN ELIGIBLE INNOVATIVE EDUCATIONAL ORGANIZATION, AN ENTITY SHALL:**

(I) APPLY TO THE DEPARTMENT ON OR BEFORE  
DECEMBER 1 OF EACH YEAR;

**(II) PROVIDE GRANTS, SERVICES, OR PROGRAMS FOR:**

**1. PUBLIC SCHOOLS TO SUPPORT INNOVATIVE  
PROGRAMS THAT ARE NOT PART OF THE REGULAR ACADEMIC  
CURRICULUM BUT THAT ENRICH THE CURRICULUM OR  
OF A PUBLIC SCHOOL IN ORDER TO ACHIEVE THE GOALS  
OF EXCELLENCE IN PUBLIC SCHOOLS ACT OF 2002; OR**

2. TEACHERS EMPLOYED BY PUBLIC SCHOOLS IN  
THE STATE FOR THE PURPOSE OF MEETING OR RETAINING STATE  
CERTIFICATION OR CERTIFICATION BY THE NATIONAL BOARD FOR  
PROFESSIONAL TEACHING STANDARDS;

**(III) CONTRIBUTE OR IRREVOCABLY ENCUMBER:**

6                           1. AT LEAST 85% OF ANNUAL CASH RECEIPTS  
7 RECEIVED AS THE RESULT OF CONTRIBUTIONS APPROVED FOR TAX CREDITS  
8 UNDER THIS SECTION FOR GRANTS, SERVICES, OR PROGRAMS FOR PUBLIC  
9 SCHOOLS AND TEACHERS EMPLOYED AT PUBLIC SCHOOLS UNDER THIS  
10 SECTION; AND

15 (IV) SUBMIT TO THE DEPARTMENT THE APPLICATION AND  
16 REVIEW PROCESS FOR APPROVAL OF GRANTS, SERVICES, OR PROGRAMS; AND

17 (v) ON OR BEFORE JANUARY 1 OF EACH YEAR, SUBMIT  
18 VERIFICATION TO THE DEPARTMENT THAT ALL REQUIREMENTS FOR  
19 ELIGIBILITY UNDER THIS PARAGRAPH HAVE BEEN MET FOR THE PRIOR  
20 CALENDAR YEAR.

21                   (D) AT LEAST 45 DAYS PRIOR TO MAKING A CONTRIBUTION TO AN  
22 ELIGIBLE EDUCATIONAL SCHOLARSHIP ORGANIZATION OR AN ELIGIBLE  
23 INNOVATIVE EDUCATIONAL ORGANIZATION, A BUSINESS ENTITY SHALL APPLY  
24 TO THE DEPARTMENT FOR AN INITIAL CREDIT CERTIFICATE.

25 (E) THE DEPARTMENT SHALL:

30 (3) WITHIN 60 DAYS AFTER RECEIPT, APPROVE OR REJECT AN  
31 ENTITY'S APPLICATION TO BECOME AN ELIGIBLE EDUCATIONAL SCHOLARSHIP  
32 ORGANIZATION OR AN ELIGIBLE INNOVATIVE EDUCATIONAL ORGANIZATION:

(4) WITHIN 45 DAYS AFTER RECEIVING AN APPLICATION, ISSUE AN INITIAL TAX CREDIT CERTIFICATE AS PROVIDED UNDER THIS SECTION STATING THE MAXIMUM AMOUNT OF THE TAX CREDIT FOR WHICH A BUSINESS ENTITY IS ELIGIBLE OR PROVIDE NOTICE OF REJECTION OF THE APPLICATION THAT CONTAINS AN EXPLANATION OF THE REASON FOR REJECTION;

(5) WITHIN 45 DAYS AFTER RECEIVING NOTICE OF A CONTRIBUTION MADE TO AN ELIGIBLE EDUCATIONAL SCHOLARSHIP ORGANIZATION OR AN ELIGIBLE INNOVATIVE EDUCATIONAL ORGANIZATION, ISSUE A FINAL CREDIT CERTIFICATE AS PROVIDED UNDER THIS SECTION;

**(6) PUBLISH AN ANNUAL LIST OF ALL ELIGIBLE EDUCATIONAL SCHOLARSHIP ORGANIZATIONS OR INNOVATIVE EDUCATIONAL ORGANIZATIONS APPROVED BY THE DEPARTMENT; AND**

(7) MAKE THE LIST UNDER ITEM (6) OF THIS SUBSECTION ACCESSIBLE ON THE INTERNET, UPDATE THE LIST REGULARLY, AND PROVIDE THE LIST TO THE COMPTROLLER ON AN ANNUAL BASIS.

(F) (1) AFTER THE DEPARTMENT HAS ISSUED AN INITIAL CREDIT CERTIFICATE UNDER THIS SECTION, THE BUSINESS ENTITY SHALL HAVE 90 DAYS TO MAKE A CONTRIBUTION TO AN ELIGIBLE EDUCATIONAL SCHOLARSHIP ORGANIZATION OR AN ELIGIBLE INNOVATIVE EDUCATIONAL ORGANIZATION UNDER THIS SECTION.

(2) WITHIN 60 DAYS AFTER MAKING A CONTRIBUTION TO AN ELIGIBLE EDUCATIONAL SCHOLARSHIP ORGANIZATION OR AN ELIGIBLE INNOVATIVE EDUCATIONAL ORGANIZATION, A BUSINESS ENTITY SHALL PROVIDE NOTICE TO THE DEPARTMENT OF THE CONTRIBUTION AND THE AMOUNT OF THE CONTRIBUTION.

**(3) IF A BUSINESS ENTITY FAILS TO MAKE A CONTRIBUTION TO AN ELIGIBLE EDUCATIONAL SCHOLARSHIP ORGANIZATION OR AN ELIGIBLE INNOVATIVE EDUCATIONAL ORGANIZATION WITHIN 90 DAYS AFTER RECEIVING AN INITIAL CREDIT CERTIFICATE, THE DEPARTMENT SHALL RESCIND THE INITIAL CREDIT CERTIFICATE.**

(G) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, THE MAXIMUM TOTAL AMOUNT OF TAX CREDITS THAT THE DEPARTMENT MAY ISSUE IN INITIAL CREDIT CERTIFICATES IS \$5,000,000 IN EACH CALENDAR YEAR.

**(2) IF AN INITIAL CREDIT CERTIFICATE HAS BEEN RESCINDED BY THE DEPARTMENT, THE DEPARTMENT MAY APPROVE ADDITIONAL INITIAL**

1 CREDIT CERTIFICATES FOR OTHER BUSINESS ENTITIES THAT MAY NOT EXCEED  
2 THE AMOUNT OF TAX CREDITS APPROVED IN THE INITIAL CREDIT  
3 CERTIFICATES THAT WERE RESCINDED.

4 (3) IN EACH CALENDAR YEAR, THE DEPARTMENT MAY NOT  
5 APPROVE INITIAL CREDIT CERTIFICATES THAT:

6 (I) EXCEED \$3,000,000 FOR CONTRIBUTIONS TO ELIGIBLE  
7 EDUCATIONAL SCHOLARSHIP ORGANIZATIONS; OR

8 (II) EXCEED \$2,000,000 FOR CONTRIBUTIONS TO ELIGIBLE  
9 INNOVATIVE EDUCATIONAL ORGANIZATIONS.

10 (H) ANY UNUSED AMOUNT OF THE CREDIT MAY NOT BE CARRIED OVER  
11 TO ANY OTHER TAXABLE YEAR.

12 (I) (1) ON OR BEFORE JANUARY 10 OF EACH YEAR, THE  
13 DEPARTMENT SHALL REPORT TO THE GOVERNOR AND, SUBJECT TO § 2-1246  
14 OF THE STATE GOVERNMENT ARTICLE, THE GENERAL ASSEMBLY, ON THE  
15 CREDITS APPROVED UNDER THIS SECTION.

16 (2) THE REPORT REQUIRED UNDER PARAGRAPH (1) OF THIS  
17 SUBSECTION SHALL INCLUDE FOR EACH BUSINESS ENTITY APPROVED TO  
18 RECEIVE A FINAL CREDIT CERTIFICATE IN THE PRIOR CALENDAR YEAR:

19 (I) THE NAME AND ADDRESS OF THE BUSINESS ENTITY;

20 (II) THE NAME AND ADDRESS OF THE ELIGIBLE  
21 EDUCATIONAL SCHOLARSHIP ORGANIZATION OR THE ELIGIBLE INNOVATIVE  
22 EDUCATIONAL ORGANIZATION RECEIVING THE CONTRIBUTION; AND

23 (III) THE AMOUNT OF THE APPROVED FINAL CREDIT  
24 CERTIFICATE.

25 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
26 July 1, 2008, and shall be applicable to all taxable years beginning after December 31,  
27 2008.