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HOUSE BILL NO. 1942

FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by Delegate Saxman
on February 7, 2005)

(Patron Prior to Substitute—Delegate Saxman)

A BILL to amend the Code of Virginia by adding in Chapter 3 of Title 58.1 an article numbered 13.2, consisting of sections numbered 58.1-439.18 through 58.1-439.27, relating to the Children At Risk in Education Tuition Assistance Grant (CARETAG) and Education Investment tax credits.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 3 of Title 58.1 an article numbered 13.2, consisting of sections numbered 58.1-439.18 through 58.1-439.27 as follows:

Article 13.2.

The Children At Risk In Education Tuition Assistance Grant and Education Investment Tax Credits.

§ 58.1-439.18. Purpose.

The purpose of this act is to create a pilot program of kindergarten through twelfth grade Children at Risk in Education Tuition Assistance Grants (CARETAG) for elementary and secondary students to (i) stimulate educational improvement in three under-performing school districts, (ii) relieve overcrowding in three high student enrollment growth districts, and (iii) enhance educational opportunities of at-risk students in any district who have failed one or more Standards of Learning tests. The Governor shall designate the three under-performing school districts and the three high student enrollment growth districts that are eligible to participate in this pilot program.

§ 58.1-439.19. Definitions.

As used in this article:

"Business entity" means a business that is subject to the taxes imposed by Articles 2 (§ 58.1-320 et seq.) and 10 (§ 58.1-400 et seq.) of Chapter 3, Chapter 12 (§ 58.1-1200 et seq.), Article 1 (§ 58.1-2500 et seq.) of Chapter 25, or Article 2 (§ 58.1-2620 et seq.) of Chapter 26 of this title.

"Eligible contribution" means a contribution of cash, stock, bonds, or other marketable securities to an eligible nonprofit tuition assistance grant-funding organization from any business that is subject to state taxation in Virginia, subject to the restrictions provided in this section.

"Eligible public school" means a public kindergarten, elementary school, or secondary school owned or exclusively controlled by the State or some political subdivision thereof, that charges tuition to an eligible student to attend.

"Eligible nonpublic school" means a nonpublic kindergarten, elementary, or secondary school, not owned or exclusively controlled by the State or some political subdivision thereof, located in Virginia that:

1. Charges tuition to an eligible student to attend;
2. Offers an education to students in any grades kindergarten through twelfth that meets the requirements described in § 58.1-439.20;

3. Satisfies the requirements for compulsory school attendance as described in § 22.1-254; and

4. (i) Complies with nonpublic school accreditation requirements as set forth in § 22.1-19 administered by the Virginia Council for Private Education, or (ii) maintains an assessment system for CARETAG students that measures the students' progress annually in reading using a national norm-referenced achievement test that includes, but is not limited to, the Stanford Achievement Test, California Achievement Test, and Iowa Test of Basic Skills.

"Eligible tuition assistance grant-funding organization" means a charitable organization exempt from federal income tax pursuant to § 501 (c) (3) of the Internal Revenue Code that, according to its Articles of Incorporation, may provide education CARETAG funds and that complies with program evaluation provisions set forth in § 22.1-212.15.

"Eligible student" means a kindergarten through twelfth grade student of compulsory school attendance age who is a resident of Virginia, enrolled in a school and a member of a household with an annual gross income of not more than \$40,000 for a household consisting of four or fewer individuals and an additional \$5,000 for each individual exceeding four. To maintain "eligible student" status, students shall comply with evaluation provisions set forth in § 58.1-439.24.

"Household" means an individual living alone or with the following: a parent and his unemancipated minor children and other unemancipated minor children who are related by blood or marriage; or other adults or unemancipated minor children living in the household who are dependent upon the individual.

"Household income" means all moneys or property received of whatever nature and from whatever source derived. The term does not include the following:

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

60 of sickness or disability.

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

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

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

67 5. Payments made by employers or labor unions for programs covering hospitalization, sickness,
68 disability, or death; supplemental unemployment benefits; strike benefits; social security; and retirement.

69 6. Additional compensation in excess of base pay received by United States servicemen by virtue of
70 serving in a combat zone.

71 "Nonprofit education foundation" means public school foundations as defined in this section.

72 "Public school foundation" means a nonstock, nonprofit corporation as defined in § 22.1-212.2:2,
73 that is exempt from taxation under § 501 (c) (3) of the Internal Revenue Code of 1986, as amended, and
74 established for the purpose of implementing public school capital improvement projects that have been
75 approved by the foundation's local school board.

76 "Tuition assistance grant" means a grant for educational expenses, which shall include tuition,
77 textbook, and testing fees, incurred by an eligible student who is enrolled in an eligible public or
78 nonpublic school.

79 "Under-performing school district" means a district with two or more schools (i) rated below "Fully
80 Accredited" and (ii) identified as failing to make "Adequate Yearly Progress" as defined by the federal
81 No Child Left Behind Act guidelines, by the Virginia Department of Education.

82 § 58.1-439.20. Tax credit for tuition assistance grant-funding organizations.

83 A. For taxable years beginning on and after January 1, 2006, a business entity may receive a credit
84 against any tax due under Articles 2 (§ 58.1-320 et seq.) and 10 (§ 58.1-400 et seq.) of Chapter 3,
85 Chapter 12 (§ 58.1-1200 et seq.), Article 1 (§ 58.1-2500 et seq.) of Chapter 25, or Article 2
86 (§ 58.1-2620 et seq.) of Chapter 26 of this title, subject to the provisions of this section.

87 B. Tax credits shall be awarded by the Department of Taxation on a first-come first-served basis in
88 accordance with procedures established by the Department under the following conditions:

89 1. The total amount of tax credits that may be granted each fiscal year under this section is \$6
90 million. Of the \$6 million, \$2 million shall be used to stimulate educational improvement in targeted
91 under-performing school districts; \$2 million shall be used to relieve overcrowding in targeted high
92 student enrollment growth districts; and \$2 million shall be used to provide alternative educational
93 opportunities for at-risk students.

94 2. Each allowable credit shall be an amount equal to 25 percent of an eligible contribution against
95 any tax due for a taxable year under this chapter. However, such a credit may not exceed 75 percent of
96 the tax due under this chapter for the taxable year, after the application of any other allowable credits
97 by the taxpayer.

98 3. Any tax credit that is not usable under this section may not be applied to future tax years. Such
99 credit may not be conveyed, assigned, or transferred unless all assets are simultaneously conveyed,
100 assigned, or transferred.

101 4. The business making the contribution may not designate a specific child as the beneficiary of the
102 contribution.

103 C. Business entities seeking a tax credit under this section shall apply to the Department, which shall
104 approve or deny the request. If approved, the Department shall notify the business entity that the tax
105 credit-approved donation must be made within 30 days to an approved organization. Tax credit
106 approval notices not acted upon within 30 days of issuance shall be void. Student CARETAG
107 organizations shall promptly notify the Department upon receipt of the tax credit-approved donation.

108 D. The Department shall approve eligibility of tuition assistance grant-funding organizations.
109 Nonprofit organizations seeking to receive and administer tax credit-approved funds shall apply by letter
110 to the Department, which shall determine whether an applicant is a nonprofit scholarship-funding
111 organization as defined in § 58.1-439.19. Notice of approval or denial, including reasons for denial,
112 shall be issued by the Department to the applicant within 60 days. Once approved, nonprofit tuition
113 assistance grant-funding organizations shall reapply for approval by sending a letter to the Department
114 every three years. The Department shall prescribe through regulations what information shall be
115 submitted by such organizations initially and when reapplying.

116 § 58.1-439.21. School eligibility and requirements.

117 A nonpublic school may be designated as an "eligible nonpublic school" for purposes of this article
118 if:

119 1. It demonstrates fiscal soundness by being in operation for at least one school year or provides the
120 Department of Taxation with a statement by a certified public accountant confirming that the nonpublic
121 school desiring to participate is insured and the owner or owners have sufficient capital or credit to

operate the school for the upcoming year serving the number of students anticipated with expected revenues from tuition and other sources that may be reasonably expected. In lieu of such a statement, a surety bond or letter of credit for the amount equal to the tuition assistance grant funds for any quarter may be filed with the Department;

2. It complies with the antidiscrimination provisions of 42 U.S.C. § 2000d;

3. It does not discriminate on the basis of race or national origin; and

4. It meets Commonwealth and local health and safety laws and codes.

§ 58.1-439.22. Eligible nonprofit tuition assistance grant-funding organization.

A nonprofit organization shall be considered an "eligible nonprofit tuition assistance grant-funding organization" if:

1. It 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.);

2. It disburses at least 90 percent of its annual tuition assistance grant-designated receipts in student grants;

3. It does not limit grants to students of one school; and

4. It submits to the Commissioner of Agriculture and Consumer Services an annual audit of tax credit-approved receipts and disbursements performed by an independent certified public accountant in accordance with generally accepted principles of accounting.

§ 58.1-439.23. Tuition Assistance Grant disbursements.

A. Subject to the limitation set forth in this article, an eligible nonprofit tuition assistance grant-funding organization shall provide tuition grants from eligible contributions to qualified students for tuition and textbook fees, as well as fees and expenses for testing services as required by this article to facilitate compliance with § 58.1-439.24, incurred by an eligible student for the purpose of attending an eligible nonpublic or nontuition-charging public school.

B. An eligible nonprofit tuition assistance grant-funding organization shall give priority consideration for CARETAG awards to eligible students:

1. Who are at risk of educational failure which, for purposes of this article, includes any student:

a. Assigned to a public school not rated "Fully Accredited";

b. Classified as "learning disabled"; or

c. Who has failed one or more Standards of Learning tests; and

2. Who received a grant from an eligible nonprofit tuition assistance grant-funding organization during the previous year.

C. The amount of a grant provided to any child for any single school year by all eligible nonprofit tuition assistance grant-funding organizations from eligible contributions shall not exceed the lesser of: (i) the actual tuition, textbook, and testing expenses incurred, or (ii) \$5,000 for a student tuition grant awarded to a student enrolled in an eligible public or nonpublic school.

D. An eligible nonprofit tuition assistance grant-funding organization that receives eligible contributions must provide to the Commissioner of Agriculture and Consumer Services an annual financial and compliance audit of its accounts and records conducted by an independent certified public accountant in accordance with generally accepted accounting practices.

E. Payment of the grant by the eligible nonprofit tuition assistance grant-funding organization shall be by individual warrant or check made payable to the student's parent or legal guardian. If the parent chooses for his child to attend an eligible nonpublic school, the warrant or check must be mailed by the eligible nonprofit tuition assistance grant-funding organization to the eligible nonpublic school of the parent's choice, and the parent shall restrictively endorse the warrant or check to the nonpublic school. An eligible nonprofit tuition assistance grant-funding organization shall ensure that, upon receipt of a CARETAG warrant or check, the parent to whom the warrant or check is made restrictively endorses the warrant or check to the eligible nonpublic school of the parent's choice for deposit into the account of the nonpublic school.

§ 58.1-439.24. Evaluation.

To ensure parents and guardians are adequately informed of educational progress of students in the CARETAG program and to provide public evaluation, eligible tuition assistance grant-funding organizations shall require, as a condition of subsequent year tuition assistance grant eligibility evidence of the student's reading achievement as measured by either (i) an annual national norm-referenced achievement assessment that may include but is not limited to the Stanford Achievement Test, California Achievement Test, and Iowa Test of Basic Skills; or (ii) a Virginia Standards of Learning reading assessment for grades three, five, and eight.

§ 58.1-439.25. Tax credit for donations to education foundations by business entities.

A. For taxable years beginning on and after January 1, 2006, a business entity may receive a credit against any tax due under Articles 2 (§ 58.1-320 et seq.) and 10 (§ 58.1-400 et seq.) of Chapter 3, Chapter 12 (§ 58.1-1200 et seq.), Article 1 (§ 58.1-2500 et seq.) of Chapter 25, or Article 2

183 (§ 58.1-2620 et seq.) of Chapter 26 of this title, in an amount equal to 25 percent of the contribution to
184 a nonprofit education foundation included on the list published annually by the Department in
185 accordance with the provisions of § 58.1-439.26.

186 B. Tax credits shall be awarded to business entities by the Department of Taxation on a first-come,
187 first-served basis in accordance with procedures established by the Department under the following
188 conditions:

189 1. The total amount of tax credits that may be granted to business entities each fiscal year under this
190 section shall be \$6 million.

191 2. Credits granted to a partnership, electing small business (Subchapter S) corporation, or limited
192 liability company shall be allocated to their individual partners, shareholders, or members, respectively,
193 in proportion to their ownership or interest in such business entities.

194 3. Any tax credit that is not used by a business entity in the taxable year following the year in which
195 the contribution is made shall not be carried forward or carried back and shall not be refundable or
196 transferable.

197 4. Every taxpayer seeking the credit allowed under this section shall submit with the income tax
198 return verification from each nonprofit education foundation to which monetary donations have been
199 made by the taxpayer during the taxable year.

200 C. In a form approved by the Department, business entities shall request and receive
201 preauthorization for a specified tax credit amount from the Department. The Department's
202 preauthorization notice shall accompany the donation from the business entity to the nonprofit education
203 foundation, which shall, within 10 days, return the notice to the Department certifying the amount of the
204 donation and date received. Preauthorization notices not acted upon by the business entity within 30
205 days of issuance shall be void. No tax credit shall be approved by the Department for activities that are
206 a part of a business entity's normal course of business.

207 § 58.1-439.26. Education foundation eligibility and requirements; list of foundations receiving
208 contributions.

209 A. Education foundations seeking to receive and administer tax credit-approved funds shall submit
210 information to the Department, which shall determine whether an applicant is a nonprofit education
211 foundation as defined in § 58.1-439.18. The Department shall prescribe through regulations what
212 information shall be submitted by such foundations. Notice of approval or denial, including reasons for
213 denial, shall be issued by the Department to the applicant within 60 days after the information is
214 submitted.

215 B. The Department shall submit a list of all nonprofit education foundations receiving contributions
216 from business entities in accordance with the provisions of this article to the chairmen of the House and
217 Senate Finance Committees no later than December 1 of each year.

218 § 58.1-439.27. Guidelines for public school foundations.

219 A. 1. A public school foundation, as defined in § 58.1-439.18 and included on the list published
220 annually by the Department in accordance with the provisions of § 58.1-439.26, shall disburse annually
221 at least 90 percent of its tax-credit derived funds for capital improvement projects approved by the local
222 school board and for extracurricular activities, including, but not limited to, sports, band, and chorus.

223 2. An audit of the foundation's tax credit-derived funds, complying with uniform financial accounting
224 standards and conducted by a certified public accountant, shall be conducted annually and a summary
225 report made available to the public upon request. The report shall include (i) the total number and
226 dollar amount of contributions received during the previous calendar year; (ii) the total number and
227 dollar amount of disbursements made to capital improvement projects during the previous calendar
228 year; and (iii) the total number and dollar amount of disbursements made to extracurricular activities
229 during the previous calendar year.