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HOUSE BILL NO. 358

FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by Senator Stosch
on March 1, 2006)

(Patron Prior to Substitute—Delegate Hamilton)

A BILL to amend and reenact §§ 63.2-2000, 63.2-2002, 63.2-2003, and 63.2-2006 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 16 of Title 22.1 a section numbered 22.1-335.1, relating to the Neighborhood Assistance Act.

Be it enacted by the General Assembly of Virginia:

1. That §§ 63.2-2000, 63.2-2002, 63.2-2003, and 63.2-2006 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 16 of Title 22.1 a section numbered 22.1-335.1 as follows:

§ 22.1-335.1. Schools for Students with Disabilities Fund established.

There is hereby created in the state treasury a special nonreverting fund to be known as the Schools for Students with Disabilities Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. All donations, grants, bequests, gifts, and other funds that may be received, and such sums as may be appropriated by the General Assembly, shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purpose of providing grants to licensed schools for students with disabilities. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Superintendent of Public Instruction.

The Department shall establish an application process and related procedures for schools for students with disabilities seeking grants from the Fund. The application shall set forth a general description of the students served by the school and their disabilities, the courses of instruction offered by the school, the proposed use of any grant moneys received from the Fund, the expected time frame by which grant moneys are to be used, an estimate of the number of students who will benefit from a grant award, and such other information as requested by the Department that is reasonably needed for purposes of evaluating the application.

Actions of the Department relating to the review of applications and awarding of grants shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.). Decisions of the Department shall be final and not subject to review or appeal.

The Department shall provide grants from the Fund in an amount not to exceed the dollar amount contained in the Fund. If moneys in the Fund are committed for years beyond the fiscal years covered under the existing appropriation act, the State Treasurer shall set aside and reserve such funds as have been committed, and such funds shall remain in the Fund for those future fiscal years. No grant shall be payable in the years beyond the existing appropriation act unless such funds are currently available in the Fund.

Persons and entities making a monetary donation to the Fund shall be eligible for tax credits as provided in §§ 63.2-2003 and 63.2-2006. The Department shall allocate tax credits among such donors in accordance with the provisions of such sections. In no case, however, shall the Department allocate more than a total of \$3 million in tax credits in any fiscal year for such monetary donations. The Department shall issue a certificate identifying the donor and the amount of the monetary donation made to the Fund for such persons' or entities' allocated tax credits.

The Board of Education is authorized to adopt regulations for the implementation of the grant program described in this section. The regulations adopted by the Board shall provide for the equitable allocation of available moneys in the Fund among the approved applications submitted by schools for students with disabilities. The regulations also shall provide procedures for the allocation of the annual limitation of \$3 million in tax credits among persons or entities making monetary donations to the Fund for fiscal years in which such donations would otherwise result in more than an aggregate total of \$3 million in tax credits under §§ 63.2-2003 and 63.2-2006.

§ 63.2-2000. Definitions.

As used in this chapter:

"Business firm" means any corporation, partnership, electing small business (Subchapter S) corporation, limited liability company, or sole proprietorship authorized to do business in this Commonwealth subject to tax 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 Title 58.1.

60 "Community services" means any type of counseling and advice, emergency assistance, medical care,
61 provision of basic necessities, or services designed to minimize the effects of poverty, furnished
62 primarily to impoverished people.

63 "Contracting services" means the provision, by a business firm licensed by the Commonwealth as a
64 contractor under Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1, of labor or technical advice to aid in the
65 development, construction, renovation, or repair of (i) homes of impoverished people or (ii) buildings
66 used by neighborhood organizations.

67 "Education" means any type of scholastic instruction or scholarship assistance to an individual who is
68 impoverished.

69 "Housing assistance" means furnishing financial assistance, labor, material, or technical advice to aid
70 the physical improvement of the homes of impoverished people.

71 "Impoverished people" means people in Virginia approved as such by the Board. Such approval shall
72 be made on the basis of generally recognized low - income criteria used by federal and state agencies.

73 "Job training" means any type of instruction to an individual who is impoverished that enables him
74 to acquire vocational skills so that he can become employable or able to seek a higher grade of
75 employment.

76 "Neighborhood assistance" means providing community services, education, housing assistance, or
77 job training.

78 "Neighborhood organization" means any local, regional or statewide organization whose primary
79 function is providing neighborhood assistance for impoverished people, and holding a ruling from the
80 Internal Revenue Service of the United States Department of the Treasury that the organization is
81 exempt from income taxation under the provisions of §§ 501 (c) (3) and 501 (c) (4) of the Internal
82 Revenue Code of 1986, as amended from time to time, or any organization defined as a community
83 action agency in the Economic Opportunity Act of 1964 (42 U.S.C. § 2701 et seq.), or any housing
84 authority as defined in § 36-3.

85 "Professional services" means any type of personal service to the public which requires as a
86 condition precedent to the rendering of such service the obtaining of a license or other legal
87 authorization and shall include, but shall not be limited to, the personal services rendered by medical
88 doctors, dentists, architects, professional engineers, certified public accountants and attorneys-at-law.

89 "School for students with disabilities" means the same as that term is defined in § 22.1-319.

90 "Schools for Students with Disabilities Fund" means the Fund established under § 22.1-335.1.

91 § 63.2-2002. Proposals; regulations; tax credits authorized; amount for programs.

92 A. Any neighborhood organization may submit a proposal to the Commissioner requesting an
93 allocation of tax credits for use by business firms making donations to the neighborhood organization.
94 The proposal shall set forth the program to be conducted by the neighborhood organization, the
95 impoverished people to be assisted, the estimated amount to be donated to the program and the plans for
96 implementing the program.

97 B. The Board is hereby authorized to adopt regulations for the approval or disapproval of such
98 proposals by neighborhood organizations and for determining the value of the donations. Such
99 regulations shall contain a requirement that an annual audit be provided by the neighborhood
100 organization as a prerequisite for approval. Such regulations shall provide for the equitable allocation of
101 the available amount of tax credits among the approved proposals submitted by neighborhood
102 organizations. The regulations shall also provide that at least 10 percent of the available amount of tax
103 credits each year shall be allocated to qualified programs proposed by neighborhood organizations not
104 receiving allocations in the preceding year; however, if the amount of tax credits for qualified programs
105 requested by such neighborhood organizations is less than 10 percent of the available amount of tax
106 credits, the unallocated portion of such 10 percent of the available amount of tax credits shall be
107 allocated to qualified programs proposed by other neighborhood organizations.

108 C. If the Commissioner approves a proposal submitted by a neighborhood organization, the
109 organization shall make the allocated tax credit amounts available to business firms making donations to
110 the approved program. A neighborhood organization shall not assign or transfer an allocation of tax
111 credits to another neighborhood organization without the approval of the Commissioner.

112 D. Any school for students with disabilities may submit an application to the Superintendent of
113 Public Instruction requesting funding from the Schools for Students with Disabilities Fund (the Fund)
114 pursuant to the provisions of § 22.1-335.1. The application shall set forth a general description of the
115 students served by the school and their disabilities, the courses of instruction offered by the school, the
116 proposed use of any grant moneys received from the Fund, the expected time frame by which grant
117 moneys are to be used, an estimate of the number of students who will benefit from a grant award, and
118 such other information as requested by the Department of Education that is reasonably needed for
119 purposes of evaluating the application. The Board of Education is authorized to adopt regulations in
120 regard to such applications as provided in such section. The Department of Education shall administer
121 the Fund.

DE. The total amount of tax credits granted for programs approved under this chapter, *including credits allocated for monetary donations to the Fund*, for each fiscal year shall not exceed ~~\$8 million~~ \$12 million; however, ~~\$2,750,000~~ \$3,750,000 shall be allocated to education programs conducted by neighborhood organizations and \$3 million shall be allocated for monetary donations to the Schools for Students with Disabilities Fund established under § 22.1-335.1. Such allocation of tax credits to education programs conducted by neighborhood organizations shall constitute the minimum amount of tax credits to be allocated to ~~education~~ such programs. However, if the amount of tax credits requested by neighborhood organizations for qualified education programs is less than ~~\$2,750,000~~ \$3,750,000, the balance of such amount shall be allocated to other types of qualified programs. Tax credits shall not be authorized after fiscal year 2009.

§ 63.2-2003. Tax credit; amount; limitation; carry over.

A. The Commissioner shall certify to the Department of Taxation, or in the case of business firms subject to a tax under Article 1 (§ 58.1-2500 et seq.) of Chapter 25 or Article 2 (§ 58.1-2620 et seq.) of Chapter 26 of Title 58.1, to the State Corporation Commission, the applicability of the tax credit provided herein for a business firm.

B. A business firm shall be eligible for a credit against 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 Title 58.1, in an amount equal to ~~forty-five percent~~ 40% of the value of (i) the money, property, professional services, and contracting services donated by the business firm during its taxable year to neighborhood organizations for programs approved pursuant to § 63.2-2002 or (ii) *monetary contributions to the Schools for Students with Disabilities Fund (the Fund) subject to the annual aggregate \$3 million limitation for tax credits for monetary donations as described in subsection D.* No tax credit of less than \$400 shall be granted for any donation, and a business firm shall not be allowed a tax credit in excess of \$175,000 per taxable year. No tax credit shall be granted to any business firm for donations to a neighborhood organization providing job training or education for individuals employed by the business firm. Any tax credit not usable for the taxable year the donation was made may be carried over to the extent usable for the next five succeeding taxable years or until the full credit has been utilized, whichever is sooner. Credits granted to a partnership, electing small business (Subchapter S) corporation, or limited liability company shall be allocated to their individual partners, shareholders, or members, respectively, in proportion to their ownership or interest in such business entities.

C. A tax credit shall be issued by the Commissioner to a business firm upon receipt of a certification made by a neighborhood organization to whom tax credits were allocated for an approved program pursuant to § 63.2-2002. The certification shall identify the type and value of the donation received and the business firm making the donation. A business firm shall be eligible for a tax credit under this section only to the extent that sufficient tax credits allocated to the neighborhood organization for an approved project are available.

D. *No more than an aggregate of \$3 million in tax credits shall be allocated in any fiscal year by the Department of Education for monetary donations to the Fund from business firms and individuals as defined under this chapter. Subject to such limitation, the Department shall issue a certificate to eligible business firms making a monetary donation to the Fund. The certificate shall identify the business firm and the amount of the donation. The business firm shall attach the certificate to the Virginia tax return on which the credit is claimed. The Board of Education shall adopt regulations pursuant to § 22.1-335.1 for the equitable allocation of the annual limitation of \$3 million in tax credits.*

§ 63.2-2006. Donations by individuals.

For purposes of this section, the term "individual" means the same as that term is defined in § 58.1-302, but excluding any individual included in the definition of a "business firm" as such term is defined in § 63.2-2000.

A. Notwithstanding any provision of this chapter limiting eligibility for tax credits, an individual making a monetary donation *or a donation of marketable securities* to a neighborhood organization approved under this chapter *or making a monetary donation to the Schools for Students with Disabilities Fund (the Fund)*, shall be eligible for a credit against taxes imposed by § 58.1-320 as provided in this section.

B. Notwithstanding any provision of this chapter specifying the amount of a tax credit, a tax credit issued to an individual making a monetary donation *or a donation of marketable securities* to an approved project *or making a monetary donation to the Fund* shall be equal to ~~45 percent~~ of such ~~monetary donation~~ 40% of the value of such donation; however, tax credits shall not be issued for any ~~monetary~~ donation to an approved project or to the Fund worth less than \$500 in a taxable year and no more than \$50,000 in tax credit shall be issued to an individual or to married persons in a taxable year. *Notwithstanding any other provision in this chapter, such \$50,000 limitation shall not apply in any taxable year beginning in the relevant fiscal year of the Commonwealth if, after an equitable allocation*

183 of tax credits under this chapter and pursuant to § 22.1-335.1 for such relevant fiscal year, the total
184 amount of tax credits granted for programs approved under this chapter and pursuant to § 22.1-335.1
185 for such fiscal year was less than \$12 million.

186 C. An individual shall be eligible for a tax credit under this section only to the extent that sufficient
187 tax credits allocated to the neighborhood organization approved under this chapter are available. In
188 addition, the allowance of tax credits for monetary donations to the Fund shall be subject to the annual
189 aggregate \$3 million limitation for tax credits for such donations as described in subsection F.

190 D. The amount of credit allowed pursuant to this section, if such credit has been issued by the
191 Department of Social Services, or allocated by the Department of Education pursuant to § 22.1-335.1,
192 shall not exceed the tax imposed pursuant to § 58.1-320 for such taxable year. Any credit not usable for
193 the taxable year may be carried over for credit against the individual's income taxes until the earlier of
194 (i) the full amount of the credit is used or (ii) the expiration of the fifth taxable year after the taxable
195 year in which the tax credit has been issued to such individual. If an individual that is subject to the tax
196 limitation imposed pursuant to this subsection is allowed another credit pursuant to any other section of
197 the Code of Virginia, or has a credit carryover from a preceding taxable year, such individual shall be
198 considered to have first utilized any credit allowed that does not have a carryover provision, and then
199 any credit that is carried forward from a preceding taxable year, prior to the utilization of any credit
200 allowed pursuant to this section.

201 E. A tax credit shall be issued by the Commissioner to an individual only upon receipt of a
202 certification made by a neighborhood organization to whom tax credits were allocated for an approved
203 program pursuant to § 63.2-2002. The certification shall identify the amount of the ~~monetary~~ donation
204 received and the individual making the donation.

205 F. ~~The tax credit allowed pursuant to this section shall be taken by the individual only to the extent~~
206 ~~he has not claimed a deduction for such amount on his federal income tax return. No more than an~~
207 ~~aggregate of \$3 million in tax credits shall be allocated in any fiscal year for monetary donations to the~~
208 ~~Fund from individuals and business firms as defined under this chapter. Subject to such limitation, the~~
209 ~~Department of Education shall issue a certificate to eligible individuals making a monetary donation to~~
210 ~~the Fund. The certificate shall identify the individual and the amount of the donation. The individual~~
211 ~~shall attach the certificate to the Virginia individual income tax return when claiming the tax credit. The~~
212 ~~Board of Education shall adopt regulations pursuant to § 22.1-335.1 to establish procedures for the~~
213 ~~allocation of the annual limitation of \$3 million in tax credits.~~

214 **2. That any business firm that has pledged in writing on or before January 1, 2006, to a**
215 **neighborhood organization to make a donation to such organization shall be eligible to receive a**
216 **tax credit equal to 45% of the value of any qualifying donation that is covered under such writing,**
217 **provided that the donation is made on or before January 1, 2013. Nothing in this enactment shall**
218 **be interpreted or construed as affecting any other provision of the Neighborhood Assistance Act**
219 **(§ 63.2-2000 et seq. of the Code of Virginia). For purposes of this enactment, the terms "business**
220 **firm" and "neighborhood organization" shall mean the same as those terms are defined in**
221 **§ 63.2-2000 of the Code of Virginia.**