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SENATE BILL NO. 189

Offered January 11, 2006

Prefiled January 10, 2006

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 58.1-439.22, relating to education tax credits.

 Patron—Martin

Referred to Committee on Finance

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 58.1-439.22 as follows:

Article 13.2.

§ 58.1-439.18. 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.

"Federal Free and Reduced Lunch Program" means the federal program established pursuant to 42 U.S.C. § 1751.

"Individual taxpayer" means any individual subject to the taxes imposed by Article 2 (§ 58.1-320 et seq.) of Chapter 3 of this title.

"Nonprofit education foundation" means public school foundations and scholarship foundations.

"Public school foundation" means a charitable organization incorporated in the Commonwealth as defined in § 22.1-212.2:2 that is exempt from taxation under § 501(c)(3) of the Internal Revenue Code of 1986, as amended, and is established in part to provide financial aid for projects that have been approved by the foundation's local school board.

"Qualified educational expenses" means school-related tuition and instructional fees and materials, including textbooks and workbooks used solely for school-related work.

"Scholarship foundation" means a charitable organization incorporated in the Commonwealth that is exempt from taxation under § 501(c)(3) of the Internal Revenue Code of 1986, as amended, and established in part to provide financial aid for the education of students residing in the Commonwealth.

"Student" means a child who is of compulsory school attendance age as defined in § 22.1-254 and who is a resident of Virginia.

§ 58.1-439.19. Tax credit authorized.

A. Tax credit for business entities and individuals.

1. For taxable years beginning on and after January 1, 2007, 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 (§ 58.1-2620 et seq.) of Chapter 26 of this title, in an amount equal to 75% of the contribution to a nonprofit education foundation included on the list published annually by the Department pursuant to § 58.1-439.20.

2. For taxable years beginning on and after January 1, 2007, an individual taxpayer may receive a credit against any tax due under Article 2 (§ 58.1-320 et seq.) of Chapter 3 of this title, in an amount equal to 75% of the (i) contribution to a nonprofit education foundation included on the list published annually by the Department pursuant to § 58.1-439.20, or (ii) the total education expenses paid by the individual taxpayer for a student who is claimed as a dependent on the individual's income tax return of the individual taxpayer, not to exceed \$800 for an individual taxpayer or \$1,200 for taxpayers filing a joint return.

3. Every individual claiming an education expense credit under this section shall submit receipts with the income tax return to verify the education expenses. Every business entity or individual claiming credit for a contribution to a nonprofit education foundation shall submit receipts from the nonprofit education foundation verifying the contribution during the taxable year.

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

1. The total amount of tax credits that may be granted to business entities each fiscal year under this section shall be \$50 million, with \$25 million granted for contributions made to public school foundations and \$25 million granted for contributions made to scholarship foundations.

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59 2. Credits granted to a partnership, election small business (subchapter S) corporation, or limited
60 liability company shall be allocated to their individual partners, shareholders, or members, respectively,
61 in proportion to their ownership or interest in such business entities.

62 3. Any tax credit that is not used by a business entity or individual taxpayer in the taxable year
63 following the year in which the contribution is made shall not be carried forward or carried back and
64 shall not be refundable or transferable.

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

72 § 58.1-439.20. Education foundation eligibility and requirements; list of foundations receiving
73 contributions.

74 A. The Department shall prescribe regulations indicating what information shall be submitted by a
75 nonprofit education foundation seeking to receive and administer tax-credit approved funds. Notice of
76 approval or denial, including reasons for denial, shall be issued by the Department to the applicant
77 within 60 days after the information is submitted.

78 B. The Department shall submit a list of all nonprofit education foundations approved to receive
79 tax-credit approved funds to the chairmen of the House and Senate Finance Committees of the General
80 Assembly no later than December 1 of each year.

81 § 58.1-439.21. Public school foundations.

82 A. A public school foundation approved by the Department pursuant to § 58.1-439.20 shall disburse
83 or specifically allocate at least 90% of its tax-credit derived funds for capital improvement projects or
84 extracurricular activities approved by the local school board, including but not limited to sports, band,
85 and chorus.

86 B. An audit of the foundation's tax credit-derived funds, complying with uniform financial accounting
87 standards and conducted by a certified public accountant, shall be conducted annually and a summary
88 report made available to the public upon request. The report shall include (i) the total number and
89 dollar amount of tax-credit approved contributions received during the previous calendar year, (ii) the
90 total number and dollar amounts of disbursements and specific allocations made to capital improvement
91 projects during the previous calendar year, and (iii) the total number and dollar amount of
92 disbursements made to extracurricular activities during the previous calendar year.

93 C. Public school foundations shall provide receipts to taxpayers for their contributions.

94 § 58.1-439.22. Scholarship foundations.

95 A. A scholarship foundation approved by the Department pursuant to § 58.1-439.20 shall disburse or
96 specifically allocate annually at least 90% of its tax-credit derived funds for qualified educational
97 expenses through scholarships.

98 B. In awarding scholarships, the foundation shall (i) give priority to any student whose family's
99 annual household income is less than twice the amount required to qualify for the Federal Free and
100 Reduced Lunch Program; (ii) require, as part of the application, evidence of the student's reading and
101 math achievement for the previous school year as measured by a national norm-referenced achievement
102 assessment, or a Virginia Standards of Learning assessment; (iii) not limit scholarships to students of
103 one school; and (iv) not discriminate on the basis of race, color, or national origin.

104 C. Scholarship foundations shall seek to ensure that schools selected by the scholarship students (i)
105 comply with the Commonwealth's and locality's health and safety laws and codes; (ii) hold a valid
106 occupancy permit as required by the locality; (iii) do not discriminate on the basis of race, color, or
107 national origin; and (iv) comply with nonpublic school accreditation requirements as set forth in
108 § 22.1-19 and administered by the Virginia Council for Private Education, or maintain an assessment
109 system that annually measures scholarship students' progress in reading and math using a national
110 norm-referenced achievement test, including, but not limited to, the Stanford Achievement Test,
111 California Achievement Test, or Iowa Test of Basic Skills.

112 D. An audit of the scholarship foundation's tax credit-derived funds, that complies with the uniform
113 financial accounting standards and is conducted by a certified public accountant, shall be conducted
114 annually and a summary report made available to the public upon request. The report shall include (i)
115 the total number and dollar amount of contributions received during the previous calendar year, (ii) the
116 total number and dollar amount of educational expenses scholarships awarded during the previous
117 calendar year, (iii) the total number and dollar amount of educational expenses scholarships awarded
118 during the previous calendar year to every student whose family's annual household income was less
119 than twice the amount required to qualify for the federal Free and Reduced Lunch Program, and (iv)
120 the percentage of first-time recipients of educational expenses scholarships who, during the previous

121 school year, were either pre-compulsory school age or enrolled in a public school.
122 E. Scholarship foundations shall provide receipts to individual taxpayers for their contributions, and
123 develop procedures for disbursing scholarships in periodic payments throughout the school year to
124 ensure scholarships are portable.