

# DEPARTMENT OF TAXATION

## 2006 Fiscal Impact Statement

1. **Patron** Stephen H. Martin

3. **Committee** Senate Finance

4. **Title** Education Tax Credits

2. **Bill Number** SB 189

**House of Origin:**

  X   **Introduced**

       **Substitute**

       **Engrossed**

**Second House:**

       **In Committee**

       **Substitute**

       **Enrolled**

### 5. **Summary/Purpose:**

This bill would allow individuals and businesses to claim a tax credit for contributions to Department of Taxation approved nonprofit foundations that provide financial assistance to public schools for capital projects or provide scholarships to students in the Commonwealth. The total amount of credits available to business entities in any given year would be capped at \$50 million. In addition, an individual taxpayer may claim a credit for \$800, or \$1,200 if filing jointly, for education expenses paid for a dependent who is a student.

This bill would be effective January 1, 2007.

6. **Fiscal Impact Estimates are:** Not available. (See Line 8.)

#### 6a. **Expenditure Impact:**

<i><b>Fiscal Year</b></i>	<i><b>Dollars</b></i>	<i><b>Positions</b></i>	<i><b>Fund</b></i>
2005-06	\$0	0	GF
2006-07	\$35,100	1	GF
2007-08	\$48,700	1	GF
2008-09	\$49,700	1	GF
2009-10	\$50,700	1	GF
2010-11	\$51,700	1	GF
2011-12	\$52,700	1	GF

7. **Budget amendment necessary:** Yes.

Lines 264 and 265, Department of Taxation

### 8. **Fiscal implications:**

This bill will have a negative impact of indeterminable amount. There is no data available on current contribution levels to public school and scholarship foundations in Virginia. The maximum loss to the state is \$50 million in credits per year from business contributions, but individuals are not subject to the cap. An estimate of the loss resulting from individual credits is not available. Most of the revenue loss would be general fund, but insurance

companies may also claim the credit, so the Priority Transportation Fund's share of the premium tax would be reduced.

While much of this bill can be implemented as part of the annual changes to our systems and forms, TAX would incur costs of \$35,100 in FY 07, \$48,700 in FY 08, \$49,700 in FY 09, \$50,700 in FY 10, \$51,700 in FY 11, and \$52,700 in FY 12. Because this bill would create a first-come first-served capped credit, along with a pre-authorization requirement, TAX would require one additional full time employee to implement this bill.

**9. Specific agency or political subdivisions affected:**

Department of Taxation  
State Corporation Commission

**10. Technical amendment necessary: Yes.**

Because tax returns with attachments cannot be filed electronically, and require the Department to manually process paper returns, the following technical amendment is offered:

Page 1, Line 52, after shall  
Strike: submit  
Insert: obtain

**11. Other comments:**

Tax Credit for Businesses

Under this bill, a business entity would be able to earn a tax credit equal to 75% of contributions to a nonprofit education foundation. A "business entity" would be a business subject to corporate income tax, individual income tax, bank franchise tax, the license tax on insurance companies, or the tax on public service corporations.

The total amount of tax credits that could be granted to business entities in any fiscal year would be \$50 million. Twenty five million dollars of the cap would be designated for contributions made to public school foundations. The other \$25 million would be granted for contributions made to scholarship foundations. Credits would be awarded to business entities on a first-come, first-served basis.

Business entities would be required request and receive preauthorization for a specified tax credit amount from the Department. A business entity would be required to make the preauthorized contribution within 30 days of issuance of the notice. The preauthorization notice would accompany the donation from the business entity to the nonprofit education foundation. The education foundation would be required to return the notice to the Department, within 10 days certifying the amount of the donation and date received.

In addition to being preauthorized, business entities claiming credit for a contribution would be required to submit receipts from each nonprofit education foundation verifying such contribution.

Credits granted to a pass-through entities would be allocated to their individual owners in proportion to their ownership or interest in such business entities. Unused amount of the credit would not be refunded and could not be carried forward.

### Individual Income Tax Credit

The bill would allow individuals to earn an income tax credit equal to 75% contributions to a nonprofit education foundation or 100% of the education expenses paid for a dependent student. The amount earned could not exceed \$800 for a single taxpayer or \$1,200 for taxpayers filing a joint return.

### Nonprofit Education Foundations

Nonprofit education foundations would be required to apply to the Department in order to be approved to receive and administer tax credit-approved funds. The Department would be required issued a notice of approval or denial, including reasons for denial to the applicant within 60 days after the application is submitted. Nonprofit education foundations would include both public school foundations and scholarship foundations.

A "public school foundation" would be a charitable organization incorporated in Virginia that is exempt from taxation under the Internal Revenue Code and is established, in part, to provide financial aid for projects that have been approved by the foundation's local school board. A public school foundation would be required to disburse least 90% percent of its tax-credit derived funds for capital improvement projects approved by the local school board and for extracurricular activities, including, but not limited to, sports, band, and chorus.

A "scholarship foundation" would be a charitable organization incorporated in Virginia that is exempt from taxation under the Internal Revenue Code and is established, in part, to provide financial aid for the education of students residing in the Commonwealth. A scholarship foundation would be required to disburse at least 90% of its tax-credit derived funds for "qualified educational expenses" through scholarships. "Qualified educational expenses" would include school-related tuition and instructional fees and materials, including textbooks and workbooks used solely for school-related work. Scholarship foundations would be require to provide receipts to individual taxpayers for their contributions

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

Scholarship foundations would also be required to ensure that schools selected by scholarship students (i) are in compliance with the Commonwealth's and locality's health and safety laws and codes; (ii) hold a valid occupancy permit as required by the locality;

(iii) do not discriminate on the basis of race, color, or national origin; and (iv) comply with nonpublic school accreditation requirements administered by the Virginia Council for Private Education.

Nonprofit education foundations would be required to be audited annually by a certified public accountant. The Department would be required to publish a list of approved nonprofit education foundations annually and submit a list of all nonprofit education foundations receiving contributions from business entities and individual taxpayers to the chairmen of the House and Senate Finance Committees no later than December 1 of each year.

The effective date of this bill is January 1, 2007.

### **Other Legislation**

**HB 1294** is similar to this bill. HB 1294 would (i) permit business a credit equal to 90% of the contribution made (ii) cap contribution credits at \$60 million, with \$30 million each evenly divided between public school foundations and scholarship foundations and (iii) allow individuals a credit equal to 100% of the individual's contribution made. The effective date would be January 1, 2006.

cc : Secretary of Finance

Date: 01/22/2006 PTR  
SB189F161.doc