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SENATE BILL NO. 1394**AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the Senate Committee on Finance
on February 1, 2007)

(Patron Prior to Substitute—Senator Stosch)

A *BILL to amend and reenact § 63.2-2002 of the Code of Virginia, to amend the Code of Virginia by adding in Chapter 16 of Title 22.1 a section numbered 22.1-335.1 and by adding in Chapter 3 of Title 58.1 an article numbered 13.2, consisting of sections numbered 58.1-439.18 through 58.1-439.25, and to repeal §§ 63.2-2000, 63.2-2001, and 63.2-2003 through 63.2-2006 of Title 63.2 of the Code of Virginia, relating to the Neighborhood Assistance Act tax credit.*

Be it enacted by the General Assembly of Virginia:

1. That § 63.2-2002 of the Code of Virginia is 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 and by adding in Chapter 3 of Title 58.1 an article numbered 13.2, consisting of sections numbered 58.1-439.18 through 58.1-439.25, as follows:

§ 22.1-335.1. Administration of Schools for Students with Disabilities Fund.

As provided in Article 13.2 of Chapter 3 of Title 58.1, the Department shall establish an application process and related procedures for schools for students with disabilities seeking grants from the Schools for Students with Disabilities Fund (the Fund) established under § 58.1-439.25. 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 §§ 58.1-439.21 and 58.1-439.24. 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.

Article 13.2.**Neighborhood Assistance Act Tax Credit.**

§ 58.1-439.18. Definitions.

As used in this article:

"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 this title.

"Commissioner of the State Department of Social Services" means the Commissioner of the State Department of Social Services or his designee.

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

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

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

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

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

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

68 "Neighborhood assistance" means providing community services, education, housing assistance, or
69 job training.

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

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

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

82 "Schools for Students with Disabilities Fund" means the Fund established under § 58.1-439.25.

83 § 58.1-439.19. Public policy; business firms; donations.

84 It is hereby declared to be public policy of the Commonwealth to encourage business firms to make
85 donations to neighborhood organizations for the benefit of impoverished people.

86 § 58.1-439.20. Proposals; regulations; tax credits authorized; amount for programs.

87 A. Any neighborhood organization may submit a proposal to the Commissioner of the State
88 Department of Social Services requesting an allocation of tax credits for use by business firms making
89 donations to the neighborhood organization. The proposal shall set forth the program to be conducted
90 by the neighborhood organization, the impoverished people to be assisted, the estimated amount to be
91 donated to the program and the plans for implementing the program.

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

103 C. If the Commissioner of the State Department of Social Services approves a proposal submitted by
104 a neighborhood organization, the organization shall make the allocated tax credit amounts available to
105 business firms making donations to the approved program. A neighborhood organization shall not
106 assign or transfer an allocation of tax credits to another neighborhood organization without the
107 approval of the Commissioner of the State Department of Social Services.

108 D. Any school for students with disabilities may submit an application to the Superintendent of
109 Public Instruction requesting grants from the Schools for Students with Disabilities Fund (the Fund)
110 established under § 58.1-439.25. The Department of Education shall administer the Fund. The Fund
111 shall be capitalized in part through monetary donations for which the taxpayer shall be eligible for a
112 tax credit under this article as provided in §§ 58.1-439.21 and 58.1-439.24.

113 The application shall set forth a general description of the students served by the school and their
114 disabilities, the courses of instruction offered by the school, the proposed use of any grant moneys
115 received from the Fund, the expected time frame by which grant moneys are to be used, an estimate of
116 the number of students who will benefit from a grant award, and any other information requested by the
117 Department of Education that is reasonably needed for purposes of evaluating the application. The
118 Department of Education shall use the application and such information for purposes of determining
119 whether or not to award a grant to the applicant. The Department of Education shall establish an
120 application process and related procedures for schools for students with disabilities seeking grants from
121 the Fund. The Board of Education is authorized to adopt regulations in regard to such applications.

Actions of the Department of Education 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 of Education shall be final and not subject to review or appeal.

E. The total amount of tax credits granted for programs approved under this article, including credits allocated for monetary donations to the Fund, for each fiscal year shall not exceed \$12 million; however, \$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 § 58.1-439.25. Such allocation of tax credits to education programs conducted by neighborhood organizations shall constitute the minimum amount of tax credits to be allocated to such programs. However, if the amount of tax credits requested by neighborhood organizations for qualified education programs is less than \$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.

§ 58.1-439.21. Tax credit; amount; limitation; carry over.

A. The Commissioner of the State Department of Social Services and the Superintendent of Public Instruction 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 this title, 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 this title, in an amount equal to 40 percent of the value of (i) 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 to the Fund as described in subsection D or (ii) 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 § 58.1-439.20. 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 under this article. 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 of the State Department of Social Services 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 § 58.1-439.20. 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 article. Subject to such limitation, the Department of Education 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 monetary 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 for the equitable allocation of the annual limitation of \$3 million in tax credits.

§ 58.1-439.22. Donations of professional services.

A. A sole proprietor, partnership or limited liability company engaged in the business of providing professional services shall be eligible for a tax credit under this article based on the time spent by the proprietor or a partner or member, respectively, who renders professional services to a program which has received an allocation of tax credits from the Commissioner of the State Department of Social Services. The value of the professional services, for purposes of determining the amount of the tax credit allowable, rendered by the proprietor or a partner or member to an approved program shall not exceed the lesser of (i) the reasonable cost for similar services from other providers or (ii) \$125 per hour.

B. A business firm shall be eligible for a tax credit under this article for the time spent by a salaried employee who renders professional services to an approved program. The value of the professional services, for purposes of determining the amount of tax credit allowed to a business firm for time spent by its salaried employee in rendering professional services to an approved project, shall be equal to the salary that such employee was actually paid for the period of time that such employee rendered professional services to the approved program.

183 C. Notwithstanding any provision of this article limiting eligibility for tax credits to business firms,
184 physicians, chiropractors, dentists, nurses, nurse practitioners, physician assistants, optometrists, dental
185 hygienists, professional counselors, clinical social workers, clinical psychologists, marriage and family
186 therapists, physical therapists, and pharmacists licensed pursuant to Title 54.1 who provide health care
187 services within the scope of their licensure, without charge, to patients of a clinic operated by an
188 organization that has received an allocation of tax credits from the Commissioner of the State
189 Department of Social Services and such clinic is organized in whole or in part for the delivery of health
190 care services without charge, or to a clinic operated not for profit providing health care services for
191 charges not exceeding those set forth in a scale prescribed by the State Board of Health pursuant to
192 § 58.1-11 for charges to be paid by persons based upon ability to pay, shall be eligible for a tax credit
193 pursuant to § 58.1-439.21 based on the time spent in providing health care services to patients of such
194 clinic, regardless of where the services are delivered. The value of such services, for purposes of
195 determining the amount of the tax credit allowable, rendered by the physician, chiropractor, dentist,
196 nurse, nurse practitioner, physician assistant, optometrist, dental hygienist, professional counselor,
197 clinical social worker, clinical psychologist, marriage and family therapist, physical therapist, or
198 pharmacist, shall not exceed the lesser of (i) the reasonable cost for similar services from other
199 providers or (ii) \$125 per hour.

200 § 58.1-439.23. Donations of contracting services.

201 A. A sole proprietor, partnership or limited liability company engaged in the business of providing
202 contracting services shall be eligible for a tax credit under this article based on the time spent by the
203 proprietor or a partner or member, respectively, who renders contracting services to a program which
204 has received an allocation of tax credits from the Commissioner of the State Department of Social
205 Services. The value of the contracting services, for purposes of determining the amount of the tax credit
206 allowable, rendered by the proprietor or a partner or member to an approved program shall not exceed
207 the lesser of (i) the reasonable cost for similar services from other providers or (ii) \$50 per hour.

208 B. A business firm shall be eligible for a tax credit under this article for the time spent by a salaried
209 employee who renders contracting services to an approved program. The value of the contracting
210 services, for purposes of determining the amount of tax credit allowed to a business firm for time spent
211 by its salaried employee in rendering contracting services to an approved project, shall be equal to the
212 salary that such employee was actually paid for the period of time that such employee rendered
213 contracting services to the approved program.

214 § 58.1-439.24. Donations by individuals.

215 For purposes of this section, the term "individual" means the same as that term is defined in
216 § 58.1-302, but excluding any individual included in the definition of a "business firm" as such term is
217 defined in § 58.1-439.18.

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

223 B. Notwithstanding any provision of this article specifying the amount of a tax credit, a tax credit
224 issued to an individual making a monetary donation or a donation of marketable securities to an
225 approved project or making a monetary donation to the Fund shall be equal to 40 percent of the value
226 of such donation; however, tax credits shall not be issued for any donation to an approved project or to
227 the Fund worth less than \$500 in a taxable year and no more than \$50,000 in tax credit shall be issued
228 to an individual or to married persons in a taxable year. Notwithstanding any other provision in this
229 article, such \$50,000 limitation shall not apply in any taxable year beginning in the relevant fiscal year
230 of the Commonwealth if, after an equitable allocation of tax credits under this article to neighborhood
231 organizations and for monetary donations to the Fund for such relevant fiscal year, the total amount of
232 tax credits granted for programs approved under this article and for monetary donations to the Fund
233 for such fiscal year was less than \$12 million.

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

238 D. The amount of credit allowed pursuant to this section, if such credit has been issued by the State
239 Department of Social Services, or allocated by the Department of Education, shall not exceed the tax
240 imposed pursuant to § 58.1-320 for such taxable year. Any credit not usable for the taxable year may be
241 carried over for credit against the individual's income taxes until the earlier of (i) the full amount of the
242 credit is used or (ii) the expiration of the fifth taxable year after the taxable year in which the tax credit
243 has been issued to such individual. If an individual that is subject to the tax limitation imposed pursuant
244 to this subsection is allowed another credit pursuant to any other section of the Code of Virginia, or

has a credit carryover from a preceding taxable year, such individual shall be considered to have first utilized any credit allowed that does not have a carryover provision, and then any credit that is carried forward from a preceding taxable year, prior to the utilization of any credit allowed pursuant to this section.

E. A tax credit shall be issued by the Commissioner of the State Department of Social Services to an individual only upon receipt of a certification made by a neighborhood organization to whom tax credits were allocated for an approved program pursuant to § 58.1-439.20. The certification shall identify the amount of the donation received and the individual making the donation.

F. No more than an aggregate of \$3 million in tax credits shall be allocated in any fiscal year for monetary donations to the Fund from individuals and business firms as defined under this article. Subject to such limitation, the Department of Education shall issue a certificate to eligible individuals making a monetary donation to the Fund. The certificate shall identify the individual and the amount of the monetary donation. The individual shall attach the certificate to the Virginia individual income tax return when claiming the tax credit. The Board of Education shall adopt regulations to establish procedures for the equitable allocation of the annual limitation of \$3 million in tax credits.

§ 58.1-439.25. 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.

As provided under subsection D of § 58.1-439.20, the Department of Education shall provide grants from the Fund for schools for students with disabilities. Total grants awarded shall not 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 §§ 58.1-439.21 and 58.1-439.24. The Department of Education shall allocate tax credits among such donors in accordance with the provisions of such sections. In no case, however, shall the Department of Education allocate more than a total of \$3 million in tax credits in any fiscal year for such monetary donations. The Department of Education 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 article. 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 §§ 58.1-439.21 and 58.1-439.24.

§ 63.2-2002. Neighborhood Assistance Act.

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

B. The Board is hereby authorized to adopt regulations for the approval or disapproval of such proposals by neighborhood organizations and for determining the value of the donations consistent with the provisions, terms, and conditions of the Neighborhood Assistance Act Tax Credit (§ 58.1-439.18 et seq.). Such regulations shall contain a requirement that an annual audit be provided by the neighborhood organization as a prerequisite for approval. Such regulations shall provide for the equitable allocation of the available amount of tax credits among the approved proposals submitted by neighborhood organizations. The regulations shall also provide that at least 10 percent of the available amount of tax credits each year shall be allocated to qualified programs proposed by neighborhood organizations not

receiving allocations in the preceding year; however, if the amount of tax credits for qualified programs requested by such neighborhood organizations is less than 10 percent of the available amount of tax credits, the unallocated portion of such 10 percent of the available amount of tax credits shall be allocated to qualified programs proposed by other neighborhood organizations. *The Commissioner shall administer the Neighborhood Assistance Act Tax Credit program.*

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

D. ~~The~~As provided in § 58.1-439.20, the total amount of tax credits granted by the Commissioner for programs approved under ~~this chapter~~ *the Neighborhood Assistance Act Tax Credit* for each fiscal year shall not exceed \$8 \$9 million; however, ~~\$2,750,000~~ \$3,750,000 shall be allocated to "education" programs conducted by "neighborhood organizations" *as such terms are defined in § 58.1-439.18*. Such allocation of tax credits to education programs shall constitute the minimum amount of tax credits to be allocated by the Commissioner to education 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.~~

2. That any business firm that has pledged in writing on or before January 1, 2007, to a neighborhood organization to make a donation to such organization shall be eligible to receive a tax credit equal to 45 percent of the value of any qualifying donation that is covered under such writing, provided that the donation is made on or before January 1, 2013. Nothing in this enactment shall be interpreted or construed as affecting any other provision of the Neighborhood Assistance Act Tax Credit (§ 58.1-439.18 et seq. of the Code of Virginia). For purposes of this enactment, the terms "business firm" and "neighborhood organization" shall mean the same as those terms are defined in § 58.1-439.18.

3. That the provisions of this act shall in no way affect any tax credit issued under the Neighborhood Assistance Act (§ 63.2-2000 et seq. of the Code of Virginia) by the Commissioner of the State Department of Social Services.

4. That §§ 63.2-2000, 63.2-2001, and 63.2-2003 through 63.2-2006 of Title 63.2 of the Code of Virginia are repealed.