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SENATE BILL NO. 331

Offered January 11, 2006

Prefiled January 11, 2006

A *BILL to amend the Code of Virginia by adding in Chapter 3 of Title 58.1 an article numbered 3.1, consisting of sections numbered 58.1-339.11 through 58.1-339.15, relating to income tax credits for payment of certain costs associated with the enrollment of children in certain schools; the Virginia Educational Choice Act.*

 Patron—Obenshain

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 3.1, consisting of sections numbered 58.1-339.11 through 58.1-339.15, as follows:

*Article 3.1.**Virginia Educational Choice Act.**§ 58.1-339.11. Definitions.**For the purposes of this chapter:*

"Academic instruction" means instruction in reading, writing, mathematics, science, history (including art and music history), geography, social studies (including government and citizenship), literature, philosophy, and foreign languages.

"Poverty guidelines" means the poverty guidelines for the 48 contiguous states and the District of Columbia, updated annually in the Federal Register by the United States Department of Health and Human Services under the authority of § 673 (2) of the Omnibus Budget Reconciliation Act of 1981.

"Qualified school" means either (i) a public elementary or secondary school charging tuition pursuant to subdivision A 2 of § 22.1-5 or § 22.1-269.1, or (ii) a nonprofit nonsectarian educational program, excluding home instruction, that satisfies the compulsory school attendance requirements of § 22.1-254.

"Qualifying educational expenses" means, with respect to a qualified school, tuition and other instructional fees charged by the qualified school and the cost of textbooks, workbooks, curricula, and other written materials used primarily for academic instruction.

"Total combined federal adjusted gross income" means the sum of the federal adjusted gross incomes for married taxpayers and, for an individual, such person's federal adjusted gross income.

§ 58.1-339.12. Tax credit for certain qualifying educational expenses.

A. For taxable years beginning on and after January 1, 2006, a taxpayer shall be allowed a refundable credit against any tax imposed pursuant to § 58.1-320 for qualifying educational expenses paid during the taxable year on behalf of each child of the taxpayer who (i) was eligible to be enrolled in a public school free of charge pursuant to § 22.1-3; (ii) qualifies as the taxpayer's dependent for federal income tax purposes; (iii) was a student at a qualified school in grades kindergarten through 12 during the taxable year; and (iv) does not attend a free public school during the semester or other portion of the school year for which such qualifying educational expenses were paid.

B. For taxable years beginning on and after January 1, 2006, the amount of the refundable credit for qualifying educational expenses paid shall be, on a per-child basis, the lesser of the qualifying educational expenses paid during the taxable year for such child or \$1,000.

For a child enrolled in a qualified school that does not charge tuition, in no event shall the amount of the credit allowed pursuant to this section in any taxable year exceed \$500 per child.

C. Only those taxpayers (i) with a total combined federal adjusted gross income, as provided in § 112 of the Internal Revenue Code as amended, not in excess of 200 percent of the poverty guideline amount corresponding to a household of an equal number of persons as listed in the most recent guidelines for the taxable year, excluding combat pay for certain members of the Armed Forces of the United States, and (ii) who reside in a county with a population less than 10,000, may use the credit provided under this article.

D. Amounts claimed under this section shall not also be claimed as an itemized deduction when computing the taxpayer's liability for taxes under § 58.1-320.

§ 58.1-339.13. Forms; regulations.

A. The Department of Taxation is authorized to require a taxpayer to submit with the tax return copies of such receipts or similar financial documentation as is necessary to confirm the taxpayer's claim of the credit.

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59 *B. The Department of Taxation shall promulgate regulations required to implement this article. The*
60 *regulations shall (i) modify the state individual tax forms, directions, and worksheets to provide a*
61 *convenient way for taxpayers to claim a credit under this article, and (ii) provide a format for a*
62 *standardized receipt to be issued by qualified schools at the conclusion of a student's period of*
63 *instruction for which qualifying educational expenses have been paid, including the date of the receipt,*
64 *the dates of the student's enrollment for which expenses are being paid, the name of the person paying*
65 *the expense, the total expenses, the portion of the amount paid toward qualifying educational expenses,*
66 *the name of the qualified school, and the printed name and signature of the agent issuing the receipt on*
67 *behalf of the qualified school.*

68 *C. Regardless of what documentation the Department of Taxation may require for purposes of*
69 *allowing credit for payments of qualifying educational expenses, no school or other organization shall*
70 *be required to provide such documentation or otherwise act to facilitate taxpayers' access to credits*
71 *under this article, except that qualified schools may be required to fulfill a prior agreement to a*
72 *taxpayer to provide such information.*

73 *§ 58.1-339.14. Limitation on regulations.*

74 *Eligibility of a school or other educational program to be considered a qualified school under this*
75 *article shall not be conditioned on a school's compliance with any state law or regulation not applicable*
76 *to all private schools in the Commonwealth, with the exception of the financial documentation*
77 *requirements authorized by § 58.1-339.13.*

78 *The credits authorized by this article shall not result in any additional regulation of public or*
79 *nonpublic schools or taxpayers' decisions about the education of their dependent children, except to the*
80 *minimal extent necessary to provide for the prevention of fraud and the efficient administration of the*
81 *credits.*

82 *§ 58.1-339.15. Average daily membership.*

83 *Every child for which a credit is taken under this article shall be included in the average daily*
84 *membership of the school division in which the child resides for purposes of calculating the state and*
85 *local share of the cost of providing an educational program meeting the Standards of Quality*
86 *(§ 22.1-253.13:1 et seq.). However, for every child for which a credit is taken under this article, the*
87 *state funding for the school division in which the child resides shall be reduced by the amount of the*
88 *credit.*

89 **2. That the provisions of this act shall expire on January 1, 2009. Within 60 days preceding each**
90 **regular session of the General Assembly, the Secretary of Finance and the Secretary of Education**
91 **shall jointly present a report to the chairmen of the Senate Committee on Finance and the House**
92 **Committee on Appropriations projecting, as of the date of the report, the total amount of credits**
93 **expected to be claimed under this article on returns for the current taxable year, as well as an**
94 **analysis of the effect of the credit on the Commonwealth's finances and educational system.**