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**HOUSE BILL NO. 1965**

Offered January 14, 2009

Prefiled January 13, 2009

A *BILL to amend the Code of Virginia by adding in Chapter 3 of Title 58.1 an article numbered 13.3, consisting of sections numbered 58.1-439.25 through 58.1-439.28, relating to the Public/Private Education Investment tax credit.*

Patrons—Saxman, Athey, Cole, Lingamfelter and Pogge

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 13.3, consisting of sections numbered 58.1-439.25 through 58.1-439.28, as follows:**

*Article 13.3.**The Public/Private Education Investment Tax Credit.**§ 58.1-439.25. 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 under 42 U.S.C. § 1751.*

*"Individual taxpayer" means an 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 as defined in this section.*

*"Public school foundation" means a nonstock, nonprofit corporation 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 established for the purpose of implementing public school capital improvement 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, workbooks, and supplies used solely for school-related work.*

*"Scholarship foundation" means a nonstock, nonprofit corporation 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.*

*§ 58.1-439.26. Tax credit for donations to education foundations by business entities and individual taxpayers.*

*A. 1. For taxable years beginning on and after January 1, 2009, 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 90 percent of the contribution to a nonprofit education foundation included on the list published annually by the Department in accordance with the provisions of § 58.1-439.27.*

*2. For taxable years beginning on and after January 1, 2009, 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 100 percent of the contribution to a nonprofit education foundation included on the list published annually by the Department in accordance with the provisions of § 58.1-439.27. However, such amount shall not exceed \$800 for an individual taxpayer and \$1,200 for taxpayers filing a joint return.*

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

*1. The total amount of tax credits that may be granted each fiscal year under this section shall not exceed \$20 million, with \$10 million granted for contributions made to public school foundations and \$10 million granted for contributions made to scholarship foundations.*

*2. Credits granted to a partnership, electing small business (Subchapter S) corporation, or limited*

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59 liability company shall be allocated to their individual partners, shareholders, or members, respectively,  
60 in proportion to their ownership or interest in such business entities.

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

64 4. Every business entity and individual taxpayer seeking the credit allowed under this section shall  
65 submit with the income tax return verification from each nonprofit education foundation to which  
66 monetary donations have been made by the taxpayer during the taxable year.

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

74 § 58.1-439.27. Education foundation eligibility and requirements; list of foundations receiving  
75 contributions.

76 A. Education foundations seeking to receive and administer tax credit-approved funds shall submit  
77 information to the Department, which shall determine whether an applicant is a nonprofit education  
78 foundation as defined in § 58.1-439.25. The Department shall prescribe through regulations what  
79 information shall be submitted by such foundations. Notice of approval or denial, including reasons for  
80 denial, shall be issued by the Department to the applicant within 60 days after the information is  
81 submitted.

82 B. The Department shall submit a list of all nonprofit education foundations receiving contributions  
83 from business entities and individual taxpayers to the chairmen of the House and Senate Finance  
84 Committees no later than December 1 of each year.

85 § 58.1-439.28. Guidelines for public school foundations and scholarship foundations.

86 A. 1. A public school foundation, as defined in § 58.1-439.25 and included on the list published  
87 annually by the Department in accordance with the provisions of § 58.1-439.27, shall disburse annually  
88 at least 90 percent of its tax-credit-derived funds for capital improvement projects approved by the local  
89 school board and for extracurricular activities, including, but not limited to, sports, band, and chorus.

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

97 B. 1. A scholarship foundation, as defined in § 58.1-439.25 and included on the list published  
98 annually by the Department in accordance with the provisions of § 58.1-439.27, shall disburse annually  
99 at least 90 percent of its tax-credit-derived funds for qualified educational expenses through  
100 scholarships.

101 2. In awarding scholarships, the scholarship foundation shall (i) provide them to any public, private,  
102 or home-schooled student whose family's annual household income is less than 250 percent of the  
103 amount required to qualify for the Federal Free and Reduced Lunch Program, (ii) not limit scholarships  
104 to students of one school, and (iii) not discriminate on the basis of race, color, national origin, or  
105 disability.

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

114 4. Subject to the limitations set forth in this article, an eligible nonprofit scholarship foundation shall  
115 provide scholarships from eligible contributions to qualified students for tuition and textbook fees and  
116 other educational fees incurred by an eligible student for the purpose of attending an eligible nonpublic  
117 or nontuition-charging public school.

118 5. The amount of a scholarship provided to any child for any single school year by all eligible  
119 nonprofit scholarship foundations from eligible contributions shall not exceed the lesser of: (i) the actual  
120 tuition, textbook, and educational fees incurred, or (ii) the per-pupil amount distributed to each local

121 school division as the state's share of the standards of quality costs using the composite index of ability  
122 to pay as defined in the general appropriation act.

123 6. Payment of the scholarship by the eligible nonprofit scholarship foundation shall be by individual  
124 warrant or check made payable to the student's parent or legal guardian. If the parent chooses for his  
125 child to attend an eligible nonpublic school, the warrant or check must be mailed by the eligible  
126 nonprofit scholarship foundation to the eligible nonpublic school of the parent's choice, and the parent  
127 shall restrictively endorse the warrant or check to the nonpublic school. An eligible nonprofit  
128 scholarship foundation shall ensure that, upon receipt of a scholarship warrant or check, the parent to  
129 whom the warrant or check is made restrictively endorses the warrant or check to the eligible nonpublic  
130 school of the parent's choice for deposit into the account of the nonpublic school.

131 7. Scholarship foundations shall (i) provide receipts, approved by the Department, to individual  
132 taxpayers for their contributions and (ii) develop procedures for disbursing scholarships in periodic  
133 payments throughout the school year to ensure scholarships are portable.

134 8. An audit of the scholarship foundation's tax-credit-derived funds, which complies with uniform  
135 financial accounting standards and is conducted by a certified public accountant, shall be conducted  
136 annually and a summary report made available to the public upon request. The report shall include (i)  
137 the total number and dollar amount of contributions received during the previous calendar year, (ii) the  
138 total number and dollar amount of educational expenses scholarships awarded during the previous  
139 calendar year, (iii) the total number and dollar amount of educational expenses scholarships awarded  
140 during the previous calendar year to every student whose family's annual household income was less  
141 than 250 percent of the amount required to qualify for the Federal Free and Reduced Lunch Program,  
142 and (iv) the percentage of first-time recipients of educational expenses scholarships who were enrolled  
143 in a public school during the previous year.