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SENATE BILL NO. 1325

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance
on February 4, 2009)

(Patron Prior to Substitute—Senator Stosch)

A BILL to amend and reenact §§ 58.1-439.18, 58.1-439.19, 58.1-439.20, 58.1-439.21, 58.1-439.22, and 58.1-439.24 of the Code of Virginia and to repeal Chapter 20 (§ 63.2-2002) of Title 63.2 of the Code of Virginia, relating to the Neighborhood Assistance Act tax credit program.

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-439.18, 58.1-439.19, 58.1-439.20, 58.1-439.21, 58.1-439.22, and 58.1-439.24 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-439.18. Definitions.

As used in this article:

"Affiliate" means with respect to any person, any other person directly or indirectly controlling, controlled by, or under common control with such person. For purposes of this definition, "control" (including controlled by and under common control with) shall mean the power, directly or indirectly, to direct or cause the direction of the management and policies of such person whether through ownership or voting securities or by contract or otherwise.

"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.

"Children with disabilities" means children who are birth to age 21, inclusive, who are in need of special education and related services.

"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~~ scholastic assistance to an individual who is impoverished.

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

"Impoverished people" means people in Virginia approved as such by the State Board of Social Services. Such approval shall be made on the basis of generally recognized low-income criteria used by federal and state agencies individuals with family annual income not in excess of 180 percent of the current poverty guidelines.

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

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

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

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

"Professional services" means any type of personal service to the public that requires as a condition precedent to the rendering of such service the obtaining of a license or other legal authorization and

60 shall include, but shall not be limited to, the personal services rendered by medical doctors, dentists,
61 architects, professional engineers, certified public accountants, and attorneys-at-law.

62 *"Scholastic assistance" means (i) counseling or supportive services to elementary school, middle*
63 *school, secondary school, or postsecondary school students or their parents in developing a*
64 *postsecondary academic or vocational education plan, including college financing options for such*
65 *students or their parents, or (ii) scholarships.*

66 § 58.1-439.19. Public policy; business firms; donations.

67 It is hereby declared to be public policy of the Commonwealth to encourage business firms to make
68 donations to neighborhood organizations for the benefit of impoverished people *or children with*
69 *disabilities.*

70 § 58.1-439.20. Proposals; regulations; tax credits authorized; amount for programs.

71 A. *Neighborhood organizations may submit education-related proposals for children with disabilities*
72 *as the primary beneficiaries (including but not limited to proposals for education programs) to the*
73 *Superintendent of Public Instruction, such proposals requesting an allocation of tax credits for use by*
74 *business firms making donations to the neighborhood organization in furtherance of the proposal. The*
75 *Superintendent of Public Instruction may approve education-related proposals (including but not limited*
76 *to proposals for education programs) regardless of whether such proposals are primarily for*
77 *impoverished people, provided that such proposals are for (i) children with disabilities as the primary*
78 *beneficiaries, and (ii) in accordance with any requirements, restrictions, or conditions for the use of any*
79 *federal funds utilized by the Department of Education for administering tax credits under this article.*
80 *Notwithstanding any requirement under this article, the Superintendent of Public Instruction and the*
81 *Department of Education shall not take any action that would violate any requirement, restriction, or*
82 *condition for the use of such federal funds.*

83 Any neighborhood organization may submit a proposal, *other than education-related proposals for*
84 *children with disabilities as the primary beneficiaries,* to the Commissioner of the State Department of
85 Social Services requesting an allocation of tax credits for use by business firms making donations to the
86 neighborhood organization *in furtherance of the proposal.*

87 The proposal shall set forth the program to be conducted by the neighborhood organization, the
88 impoverished people *or children with disabilities* to be assisted, the estimated amount to be donated to
89 the program, and the plans for implementing the program.

90 B. The State Board of Social Services ~~is~~ *and the Board of Education are* hereby authorized to adopt
91 regulations (*or, alternatively, guidelines in the case of the Board of Education*) for the approval or
92 disapproval of such proposals by neighborhood organizations and for determining the value of the
93 donations. Such regulations *or guidelines* shall contain a requirement that an annual audit, review, *or*
94 *compilation as required by OMB Circular No. A-133 as may be applicable to nonprofit organizations* be
95 provided by the neighborhood organization as a prerequisite for approval. Such regulations *or guidelines*
96 shall also provide that at least 50 percent of the persons served by the neighborhood organization are
97 impoverished people as defined in § 58.1-439.18. Such regulations *or guidelines* shall provide for the
98 equitable allocation of the available amount of tax credits among the approved proposals submitted by
99 neighborhood organizations. The regulations *or guidelines* shall also provide that at least 10 percent of
100 the available amount of tax credits each year shall be allocated to qualified programs proposed by
101 neighborhood organizations not receiving allocations in the preceding year; however, if the amount of
102 tax credits for qualified programs requested by such neighborhood organizations is less than 10 percent
103 of the available amount of tax credits, the unallocated portion of such 10 percent of the available
104 amount of tax credits shall be allocated to qualified programs proposed by other neighborhood
105 organizations.

106 C. If the Commissioner of the State Department of Social Services *or the Superintendent of Public*
107 *Instruction* approves a proposal submitted by a neighborhood organization, the organization shall make
108 the allocated tax credit amounts available to business firms making donations to the approved program.
109 A neighborhood organization shall not assign or transfer an allocation of tax credits to another
110 neighborhood organization without the approval of the Commissioner of the State Department of Social
111 Services *or the Superintendent of Public Instruction, as applicable.*

112 *No neighborhood organization nor any grouping of neighborhood organization affiliates shall receive*
113 *an allocation of tax credits from both the Commissioner of the Department of Social Services and the*
114 *Superintendent of Public Instruction for the same program in a fiscal year. For purposes of this*
115 *prohibition, a neighborhood organization or any grouping of neighborhood organization affiliates that*
116 *conducts one program for children with disabilities and a separate program for impoverished people*
117 *shall be deemed to be conducting different programs as long as no individual or person is a beneficiary*
118 *under both programs.*

119 *Notwithstanding any other provision of law, no more than an aggregate of \$0.5 million in tax credits*
120 *shall be approved in a fiscal year to a neighborhood organization or to a grouping of neighborhood*
121 *organization affiliates.*

D. The total amount of tax credits granted for programs approved under this article for each fiscal year shall not exceed \$8 \$12 million; however, \$2,750,000 shall be allocated to education programs conducted by neighborhood organizations. Such allocation of tax credits to education programs shall constitute the minimum amount of tax credits to be allocated to education programs. However, if the amount of tax credits requested by neighborhood organizations for qualified education programs is less than \$2,750,000, the balance of such amount shall be allocated to other types of qualified programs, allocated as follows: \$3 million for education-related proposals for children with disabilities as the primary beneficiaries for approval by the Superintendent of Public Instruction and \$9 million for all other proposals for approval by the Commissioner of the State Department of Social Services. Of the \$9 million in tax credits for approval by the Commissioner of the State Department of Social Services, \$3.75 million in tax credits shall be allocated to education programs conducted by neighborhood organizations, which allocation shall constitute the minimum amount of tax credits to be allocated to education programs for approval by the Commissioner of the State Department of Social Services. However, if the amount of tax credits requested by neighborhood organizations from the Commissioner of the State Department of Social Services is less than \$3.75 million, the balance of such amount shall be allocated to other types of qualified programs for approval by the Commissioner of the State Department of Social Services.

If the amount of tax credits requested by neighborhood organizations and approved by the Commissioner of the State Department of Social Services is less than \$9 million, then the balance of such amount shall be allocated to programs for approval by the Superintendent of Public Instruction. If the amount of tax credits requested by neighborhood organizations and approved by the Superintendent of Public Instruction is less than \$3 million, then the balance of such amount shall be allocated to programs for approval by the Commissioner of the State Department of Social Services. The Superintendent and the Commissioner of the State Department of Social Services shall work cooperatively for purposes of allocating any balance of tax credits that have not been requested or approved and for ensuring that neighborhood organization proposals are submitted to the proper state agency. The Superintendent and the Commissioner of the State Department of Social Services may request the assistance of the Department of Taxation for purposes of determining whether or not anticipated donations for which tax credits are requested by a neighborhood organization likely qualify as a charitable donation under federal tax laws and regulations.

E. Actions of (i) the State Department of Social Services, or the Commissioner of the same, or (ii) the Superintendent or the Department of Education relating to the review of neighborhood organization proposals and the allocation of tax credits shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.). Decisions of (a) the State Department of Social Services, or the Commissioner of the same, or (b) the Superintendent or the Department of Education shall be final and not subject to review or appeal.

F. Tax credits shall not be authorized after fiscal year 2009 2011.

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

A. The Superintendent of Public Instruction and the Commissioner of the State Department of Social Services 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, 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, in an amount equal to 40 percent of the value of 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. Notwithstanding any other law and for purposes of this article, the value of a motor vehicle donated by a business firm shall, in all cases, be such value as determined for federal income tax purposes using the laws and regulations of the United States relating to federal income taxes. 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. 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 Superintendent of Public Instruction or 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.

§ 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 that has received an allocation of tax credits from the *Superintendent of Public Instruction or 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.

C. Notwithstanding any provision of this article limiting eligibility for tax credits to business firms, physicians, chiropractors, dentists, nurses, nurse practitioners, physician assistants, optometrists, dental hygienists, professional counselors, clinical social workers, clinical psychologists, marriage and family therapists, physical therapists, and pharmacists licensed pursuant to Title 54.1 who provide health care services within the scope of their licensure, without charge, to patients of a clinic operated by an organization that has received an allocation of tax credits from the Commissioner of the State Department of Social Services and such clinic is organized in whole or in part for the delivery of health care services without charge, or to a clinic operated not for profit providing health care services for charges not exceeding those set forth in a scale prescribed by the State Board of Health pursuant to § 32.1-11 for charges to be paid by persons based upon ability to pay, shall be eligible for a tax credit pursuant to § 58.1-439.21 based on the time spent in providing health care services to patients of such clinic, regardless of where the services are delivered. The value of such services, for purposes of determining the amount of the tax credit allowable, rendered by the physician, chiropractor, dentist, nurse, nurse practitioner, physician assistant, optometrist, dental hygienist, professional counselor, clinical social worker, clinical psychologist, marriage and family therapist, physical therapist, or pharmacist, shall not exceed the lesser of (i) the reasonable cost for similar services from other providers or (ii) \$125 per hour.

§ 58.1-439.24. Donations by individuals.

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

A. Notwithstanding any provision of this article limiting eligibility for tax credits, an individual making a monetary donation or a donation of marketable securities to a neighborhood organization approved under this article shall be eligible for a credit against taxes imposed by § 58.1-320 as provided in this section.

B. Notwithstanding any provision of this article specifying the amount of a tax credit, a tax credit issued to an individual making a monetary donation or a donation of marketable securities to an approved project shall be equal to 40 percent of the value of such donation; however, tax credits shall not be issued for any donation made in the taxable year with a value of less than \$500, and no more than \$50,000 in tax credit shall be issued to an individual or to married persons in a taxable year.

C. An individual shall be eligible for a tax credit under this section only to the extent that sufficient tax credits allocated to the neighborhood organization approved under this article are available.

D. The amount of credit allowed pursuant to this section, if such credit has been issued by the *Superintendent of Public Instruction or the Commissioner of the State Department of Social Services*, shall not exceed the tax imposed pursuant to § 58.1-320 for such taxable year. Any credit not usable for the taxable year may be carried over for credit against the individual's income taxes until the earlier of (i) the full amount of the credit is used or (ii) the expiration of the fifth taxable year after the taxable year in which the tax credit has been issued to such individual. If an individual that is subject to the tax limitation imposed pursuant 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

245 allowed pursuant to this section.

246 E. A tax credit shall be issued by the *Superintendent of Public Instruction or the* Commissioner of
247 the State Department of Social Services to an individual only upon receipt of a certification made by a
248 neighborhood organization to whom tax credits were allocated for an approved program pursuant to
249 § 58.1-439.20. The certification shall identify the type and value of the donation received and the
250 individual making the donation.

251 **2. That the Department of Education shall establish and make publicly available guidelines for**
252 **purposes of implementing the provisions of the Neighborhood Assistance Act Tax Credit**
253 **(§ 58.1-439.18 et seq. of the Code of Virginia) that relate to tax credits allocated for programs for**
254 **children with disabilities as defined under § 58.1-439.18. The guidelines shall be exempt from the**
255 **Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).**

256 **3. That the provisions of this act providing that a grouping of neighborhood organization affiliates**
257 **shall not be approved for more than an aggregate of \$0.5 million in neighborhood assistance tax**
258 **credits in a fiscal year shall not be applicable to any grouping of neighborhood organization**
259 **affiliates that was approved for more than an aggregate of \$0.5 million in neighborhood assistance**
260 **tax credits in any fiscal year of the Commonwealth that ended prior to January 1, 2010.**

261 **4. That Chapter 20 (§ 63.2-2002) of Title 63.2 of the Code of Virginia is repealed.**