

DEPARTMENT OF TAXATION

2009 Fiscal Impact Statement

1. **Patron** Christopher B. Saxman

2. **Bill Number** HB 1965

3. **Committee** Senate Finance

House of Origin:

 Introduced

 Substitute

 Engrossed

4. **Title** Income Tax; Public/Private Education
Investment Tax Credits

Second House:

 X **In Committee**

 Substitute

 Enrolled

5. **Summary/Purpose:**

This bill would allow individuals and businesses to claim a tax credit for contributions to TAX-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 fiscal year would be capped at \$20 million. In addition, the amount of credit claimed by individuals in a taxable year would be limited to \$800, or \$1,200 if filing jointly. There would be no annual cap on total credits claimed by all individuals.

This bill would be effective for taxable years beginning on and after January 1, 2010.

6. **Fiscal Impact Estimates are:** Preliminary. (See Line 8.)

6a. **Expenditure Impact:**

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Positions</i>	<i>Fund</i>
2008-09	\$0	0	GF
2009-10	\$24,600	1	GF
2010-11	\$47,400	1	GF
2011-12	\$48,400	1	GF
2012-13	\$49,400	1	GF
2013-14	\$50,400	1	GF
2014-15	\$51,400	1	GF

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

ITEM(S): Page 1, Revenue Estimates
270 and 273, Department of Taxation

8. Fiscal implications:

Administrative Impact

In order to implement this credit, TAX would incur estimated administrative costs of \$24,600 for FY 2010, \$47,400 for FY 2011, \$48,400 for FY 2012, \$49,400 for FY 2013, \$50,400 for FY 2014, and \$51,400 for FY 2015. 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.

Revenue Impact

The tax incentive provided by this bill will most likely increase the amount of contributions to nonprofit foundations that provide financial assistance to public schools or provide scholarships by an unknown magnitude. Therefore, this bill would have an unknown, but potentially significant, negative impact on General Fund revenues. The potential negative General Fund revenue impact could far exceed \$20 million per year because the credit allowed to all businesses is capped at \$20 million and individual credits are not subject to the cap. Most of the revenue loss would be General Fund, but because insurance companies may also claim the credit, the Priority Transportation Fund's share of the premium tax would be reduced.

9. Specific agency or political subdivisions affected:

Department of Taxation
State Corporation Commission

10. Technical amendment necessary: No.

11. Other comments:

Tax Credit for Businesses

Under this bill, a business entity would be able to earn a tax credit equal to 90% 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 \$20 million. Ten million dollars of the cap would be designated for contributions made to public school foundations. The other \$10 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 to request and receive preauthorization for a specified tax credit amount from TAX. 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 TAX 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 pass-through entities would be allocated to their individual owners in proportion to their ownership or interest in such business entities. Unused amounts 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 100% contributions to a nonprofit education foundation. The amount earned could not exceed \$800 for a single taxpayer or \$1,200 for taxpayers filing a joint return. Unused amounts of the credit would not be refunded and could not be carried forward.

Nonprofit Education Foundations

Nonprofit education foundations would be required to apply to TAX in order to be approved to receive and administer tax credit-approved funds. TAX would be required to issue 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 this Commonwealth that is exempt from taxation under § 501(c)(3) of 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 at 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 this Commonwealth that is exempt from taxation under § 501(c)(3) of 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 including, but not limited to, those used for autism spectrum disorders. Scholarship foundations would be required to provide receipts to individual taxpayers for their contributions.

In awarding scholarships, the scholarship foundation would (i) provide them to any student whose family's annual household income is less than 250% of the amount required to qualify for the Federal Free and Reduced Lunch Program; (ii) not limit scholarships to

students of one school; and (iii) not discriminate on the basis of race, color, national origin or disability.

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.

The amount of the scholarship provided to any child for any single school year by all eligible nonprofit scholarship foundations from eligible contributions would not be allowed to exceed the lesser of: (i) the actual tuition, textbook, and educational fees incurred, or (ii) the per pupil amount distributed to each local school division as the state's share of the standards of quality costs using the composite index of ability to pay as defined in the general appropriation act.

Payment of the scholarship by the eligible nonprofit scholarship foundation would be by individual warrant or check made payable to the student's parent or legal guardian. If the parent chooses for his child to attend an eligible nonpublic school, the warrant or check would be required to be mailed by the eligible nonprofit scholarship foundation to the eligible nonpublic school of the parent's choice, and the parent would be required to restrictively endorse the warrant or check to the eligible nonpublic school. An eligible nonprofit scholarship foundation would be required to ensure that, upon receipt of a scholarship warrant or check, the parent to whom the warrant or check is made restrictively endorses the warrant or check to the eligible nonpublic school of the parent's choice for deposit into the account of the nonpublic school.

Nonprofit education foundations would be required to be audited annually by a certified public accountant. TAX 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.

This bill would be effective for taxable years beginning on and after January 1, 2010.

cc : Secretary of Finance

Date: 2/10/2009 TLG
HB1965FE161