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## HOUSE BILL NO. 321

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance  
on February 28, 2012)

(Patron Prior to Substitute—Delegate Massie)

A BILL to amend and reenact §§ 58.1-439.18 through 58.1-439.21 and 58.1-439.24 of the Code of Virginia, 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, and to repeal the third enactment of Chapter 851 of the Acts of Assembly of 2009, relating to tax credits for donations to organizations providing assistance to low-income families, including but not limited to scholarships for K through 12 students attending nonpublic schools.

**Be it enacted by the General Assembly of Virginia:**

1. That §§ 58.1-439.18 through 58.1-439.21 and 58.1-439.24 of the Code of Virginia are amended and reenacted and 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:

§ 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. "Business firm" also means any trust or fiduciary for a trust subject to tax imposed by Article 6 (§ 58.1-360 et seq.) of Chapter 3.

"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 low-income persons.

"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 low-income persons or (ii) buildings used by neighborhood organizations.

"Education" means any type of scholastic instruction or scholastic assistance to an individual who is impoverished a low-income person or an eligible student with a disability.

"Eligible student with a disability" means a student (i) for whom an individualized educational program has been written and finalized in accordance with the federal Individuals with Disabilities Education Act (IDEA), regulations promulgated pursuant to IDEA, and regulations of the Board of Education and (ii) whose family's annual household income is not in excess of 400 percent of the current poverty guidelines.

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

"Impoverished people" means individuals with family annual income not in excess of 200 percent of the current poverty guidelines for proposals submitted by a nonprofit entity requesting an allocation of tax credits under this article.

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

"Low-income person" means an individual whose family's annual household income is not in excess of 300 percent of the current poverty guidelines.

"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, and holding a ruling from the Internal Revenue Service of the United States Department of the Treasury that the organization is

60 exempt from income taxation under the provisions of §§ 501(c)(3) and 501(c)(4) of the Internal Revenue  
61 Code of 1986, as amended from time to time, or any organization defined as a community action  
62 agency in the Economic Opportunity Act of 1964 (42 U.S.C. § 2701 et seq.), or any housing authority  
63 as defined in § 36-3.

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

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

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

75 § 58.1-439.19. Public policy; business firms; donations.

76 It is hereby declared to be public policy of the Commonwealth to encourage business firms to make  
77 donations to neighborhood organizations for the benefit of ~~impoverished people~~ *low-income persons*.

78 § 58.1-439.20. Proposals; regulations; tax credits authorized; amount for programs.

79 A. Any neighborhood organization may submit a proposal, other than education proposals, to the  
80 Commissioner of the State Department of Social Services requesting an allocation of tax credits for use  
81 by business firms making donations to the neighborhood organization. Neighborhood organizations may  
82 submit education proposals to the Superintendent of Public Instruction requesting an allocation of tax  
83 credits for use by business firms making donations to the neighborhood organization.

84 The proposal shall set forth the program to be conducted by the neighborhood organization, the  
85 ~~impoverished people~~ *low-income persons or eligible students with disabilities* to be assisted, the  
86 estimated amount to be donated to the program, and the plans for implementing the program.

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

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

109 Notwithstanding any other provision of law, (i) no more than an aggregate of ~~\$0.5~~ \$0.825 million in  
110 tax credits shall be approved in a fiscal year to a neighborhood organization or to a grouping of  
111 neighborhood organization affiliates for all education proposals, and (ii) no more than an aggregate of  
112 \$0.5 million in tax credits shall be approved in a fiscal year to a neighborhood organization or to a  
113 grouping of neighborhood organization affiliates for all other proposals combined. *However, if the State*  
114 *Department of Social Services or the Department of Education after the initial allocation of tax credits*  
115 *to approved proposals has a balance of tax credits remaining for the fiscal year that can be used or*  
116 *allocated by a neighborhood organization for a proposal that had been approved for tax credits during*  
117 *the initial allocation by the State Department of Social Services or the Department of Education, then*  
118 *(a) the Commissioner of the State Department of Social Services or the Superintendent of Public*  
119 *Instruction, as applicable, shall reallocate the remaining balance of tax credits to such previously*  
120 *approved proposals to the extent that a neighborhood organization can use or allocate additional tax*  
121 *credits for the previously approved proposal and (b) the \$0.825 and \$0.5 million annual limitations for*

tax credits approved to a grouping of neighborhood organization affiliates shall be inapplicable to the extent of any balance of tax credits reallocated under clause (a). The balance of tax credits remaining for reallocation shall include the amount of any tax credits that have been granted for a proposal approved during the initial allocation but for which the Commissioner of the State Department of Social Services or the Superintendent of Public Instruction has been provided notice by the neighborhood organization that it will not be able to use or allocate such amount for the approved proposal.

D. The total amount of tax credits granted for programs approved under this article for each fiscal year shall not exceed ~~\$11.9~~ \$15 million allocated as follows: ~~\$4.9~~ \$8 million for education proposals for approval by the Superintendent of Public Instruction and \$7 million for all other proposals 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 Superintendent for education proposals is less than ~~\$4.9 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 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 to proposals 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. The issuance of tax credits under this article shall expire on July 1, ~~2014~~ 2017.

§ 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.), 6 (§ 58.1-360 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~~ 65 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.

§ 58.1-439.24. 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

183 approved under this article shall be eligible for a credit against taxes imposed by § 58.1-320 as provided  
184 in this section.

185 B. Notwithstanding any provision of this article specifying the amount of a tax credit, a tax credit  
186 issued to an individual making a monetary donation or a donation of marketable securities to an  
187 approved project shall be equal to 40 65 percent of the value of such donation; however, tax credits  
188 shall not be issued for any donation made in the taxable year with a value of less than \$500, and no  
189 more than \$50,000 in tax credit shall be issued to an individual or to married persons in a taxable year.

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

192 D. The amount of credit allowed pursuant to this section, if such credit has been issued by the  
193 Superintendent of Public Instruction or the Commissioner of the State Department of Social Services,  
194 shall not exceed the tax imposed pursuant to § 58.1-320 for such taxable year. Any credit not usable for  
195 the taxable year may be carried over for credit against the individual's income taxes until the earlier of  
196 (i) the full amount of the credit is used or (ii) the expiration of the fifth taxable year after the taxable  
197 year in which the tax credit has been issued to such individual. If an individual that is subject to the tax  
198 limitation imposed pursuant to this subsection is allowed another credit pursuant to any other section of  
199 the Code of Virginia, or has a credit carryover from a preceding taxable year, such individual shall be  
200 considered to have first utilized any credit allowed that does not have a carryover provision, and then  
201 any credit that is carried forward from a preceding taxable year, prior to the utilization of any credit  
202 allowed pursuant to this section.

203 E. A tax credit shall be issued by the Superintendent of Public Instruction or the Commissioner of  
204 the State Department of Social Services to an individual only upon receipt of a certification made by a  
205 neighborhood organization to whom tax credits were allocated for an approved program pursuant to  
206 § 58.1-439.20. The certification shall identify the type and value of the donation received and the  
207 individual making the donation.

#### 208 Article 13.3.

##### 209 Education Improvement Scholarships Tax Credits.

###### 210 § 58.1-439.25. Definitions.

211 As used in this article, unless the context requires a different meaning:

212 "Eligible student with a disability" means a student (i) for whom an individualized educational  
213 program has been written and finalized in accordance with the federal Individuals with Disabilities  
214 Education Act (IDEA), regulations promulgated pursuant to IDEA, and regulations of the Board of  
215 Education; (ii) whose family's annual household income is not in excess of 400 percent of the current  
216 poverty guidelines; and (iii) who otherwise is a student as defined in this section.

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

220 "Qualified educational expenses" means school-related tuition and instructional fees and materials,  
221 including textbooks, workbooks, and supplies used solely for school-related work.

222 "Scholarship foundation" means a nonstock, nonprofit corporation that is (i) exempt from taxation  
223 under § 501(c)(3) of the Internal Revenue Code of 1954, as amended or renumbered; (ii) approved by  
224 the Department of Education in accordance with the provisions of § 58.1-439.27; and (iii) established to  
225 provide financial aid for the education of students residing in the Commonwealth.

226 "Student" means a child who is a resident of Virginia and (i) is enrolled in the Commonwealth's  
227 public schools for the year prior to receiving a scholarship foundation scholarship, (ii) is a prior  
228 recipient of a scholarship foundation scholarship, (iii) is eligible to enter kindergarten or first grade, or  
229 (iv) was not a resident of Virginia during the preceding school year.

###### 230 § 58.1-439.26. Tax credit for donations to certain scholarship foundations.

231 A. For taxable years beginning on or after January 1, 2013, but before January 1, 2018, a person  
232 shall be eligible to earn a credit against any tax due under Article 2 (§ 58.1-320 et seq.) or Article 10  
233 (§ 58.1-400 et seq.), Chapter 12 (§ 58.1-1200 et seq.), Chapter 25 (§ 58.1-2500 et seq.), or Article 2  
234 (§ 58.1-2620 et seq.) of Chapter 26 in an amount equal to 65 percent of the monetary donation made by  
235 the person to a scholarship foundation included on the list published annually by the Department of  
236 Education in accordance with the provisions of § 58.1-439.28. The credit shall be allowed to be claimed  
237 for the taxable year following the year of such donation. For individuals and corporations making  
238 estimated tax payments pursuant to this chapter, the credit shall be prorated equally against the  
239 individual's or corporation's estimated tax payments made in the third and fourth quarters of the taxable  
240 year in which the credit may be claimed and the final tax payment.

241 No tax credit shall be allowed under this article if the monetary donation is less than \$500. In  
242 addition, no more than \$50,000 in tax credits shall be issued to an individual or to married persons in  
243 a taxable year. However, such limitation on the amount of tax credits issued to an individual shall not  
244 apply to credits issued to any business entity, including a sole proprietorship.

*B. Tax credits shall be awarded to persons making monetary donations to scholarship foundations by the Department of Education on a first-come, first-served basis in accordance with procedures established by the Department of Education under the following conditions:*

*1. The total amount of tax credits that may be granted each fiscal year under this article shall not exceed \$25 million.*

*2. The amount of the credit shall not exceed the person's tax liability pursuant to Article 2 (§ 58.1-320 et seq.) or Article 10 (§ 58.1-400 et seq.), Chapter 12 (§ 58.1-1200 et seq.), Chapter 25 (§ 58.1-2500 et seq.), or Article 2 (§ 58.1-2620 et seq.) of Chapter 26, as applicable, for the taxable year in which the credit is claimed. Any credit not usable for the taxable year following the taxable year of the monetary donation may be carried over for credit against the taxes imposed upon the person pursuant to Article 2 (§ 58.1-320 et seq.) or Article 10 (§ 58.1-400 et seq.), Chapter 12 (§ 58.1-1200 et seq.), Chapter 25 (§ 58.1-2500 et seq.), or Article 2 (§ 58.1-2620 et seq.) of Chapter 26, as applicable, in the next five succeeding taxable years or until the total amount of the tax credit has been taken, whichever is sooner.*

*The amount of any credit attributable to a partnership, electing small business corporation (S corporation), or limited liability company shall be allocated to the individual partners, shareholders, or members, respectively, in proportion to their ownership or interest in such business entities.*

*3. Every person seeking the credit allowed under this article shall submit with the applicable tax return verification from each scholarship foundation to which monetary donations have been made by the person during the taxable year.*

*C. In a form approved by the Department of Education, the person seeking to make a monetary donation to a scholarship foundation or a scholarship foundation on behalf of such person shall request preauthorization for a specified tax credit amount from the Superintendent of Public Instruction. The Department of Education's preauthorization notice shall accompany the monetary donation from the person to the scholarship foundation, which shall, within 20 days, return the notice to the Department of Education certifying the amount of the monetary donation and date received. Preauthorization notices not acted upon within 60 days of issuance shall be void. No tax credit shall be approved by the Department of Education for activities that are a part of a person's normal course of business.*

*§ 58.1-439.27. Scholarship foundation eligibility and requirements; list of foundations receiving donations.*

*A. Persons seeking to receive and administer tax-credit-approved funds shall submit information to the Department of Education, which shall determine whether an applicant is a scholarship foundation as defined in § 58.1-439.25. The Department of Education shall prescribe through guidelines what reasonable information shall be submitted by such persons. Notice of approval or denial, including reasons for denial, shall be issued by the Department of Education to the applicant within 60 days after the complete information is submitted. Any approval shall not be withheld unreasonably.*

*B. The Department of Education shall submit a list of all scholarship foundations receiving donations for which tax credits were awarded under this article to the Chairmen of the House and Senate Finance Committees no later than December 1 of each year.*

*§ 58.1-439.28. Guidelines for scholarship foundations.*

*A. As a condition for qualification by the Department of Education, a scholarship foundation, as defined in § 58.1-439.25 and included on the list published annually by the Department of Education pursuant to this section, shall disburse at least 90 percent of the amount of each donation for which a tax credit may be received under this article within one year of such donation for qualified educational expenses through scholarships to eligible students. Tax-credit-derived funds not used for such scholarships may only be used for the administrative expenses of the scholarship foundation. Any scholarship foundation that fails to disburse at least 90 percent of any donated amount within one year shall be removed from the annual list published pursuant to this section and shall not be entitled to request preauthorization for additional tax credits, nor shall it be entitled to receive and administer additional tax-credit-derived funds.*

*B. By September 30 of each year, the scholarship foundation shall provide the following information to the Department of Education: (i) the total number and dollar amount of contributions received between September 1 of the prior calendar year and September 1 of the current calendar year, (ii) the dates when such contributions were received, and (iii) the total number and dollar amount of qualified educational expenses scholarships awarded for the school year that began during the current calendar year. Any scholarship foundation that fails to provide this report by September 30 shall be removed from the annual list published pursuant to this section and shall not be entitled to request preauthorization for additional tax credits, nor shall it be entitled to receive and administer additional tax-credit-derived funds.*

*C. In awarding scholarships from tax-credit-derived funds, the scholarship foundation shall (i) provide scholarships for qualified educational expenses only to students whose family's annual*

household income is not in excess of 300 percent of the current poverty guidelines or eligible students with a disability, (ii) not limit scholarships to students of one school, and (iii) comply with Title VI of the Civil Rights Act of 1964, as amended. Payment of scholarships from tax-credit-derived funds by the eligible scholarship foundation shall be by individual warrant or check made payable to and mailed to the eligible school that the student's parent or legal guardian indicates. In mailing such scholarship payments, the eligible scholarship foundation shall include a written notice to the eligible school that the source of the scholarship was donations made by persons receiving tax credits for the same pursuant to this article.

D. Scholarship foundations shall ensure that schools selected by students to which tax-credit-derived funds may be paid (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) comply with Title VI of the Civil Rights Act of 1964, as amended; and (iv) are nonpublic schools that comply with nonpublic school accreditation requirements as set forth in § 22.1-19 and administered by the Virginia Council for Private Education or nonpublic schools that maintain an assessment system that annually measures scholarship students' progress in reading and math using a national norm-referenced achievement test, including but not limited to the Stanford Achievement Test, California Achievement Test, and Iowa Test of Basic Skills.

Eligible schools shall compile the results of any national norm-referenced achievement test for each of its students receiving tax-credit-derived scholarships and shall provide the respective parents or legal guardians of such students with a copy of the results on an annual basis, beginning with the first year of testing of the student. Such schools also shall annually provide to the Department of Education for each such student the achievement test results, beginning with the first year of testing of the student, and student information that would allow the Department to aggregate the achievement test results by grade level, gender, family income level, number of years of participation in the scholarship program, and race. Beginning with the third year of testing of each such student and test-related data collection, the Department of Education shall ensure that the achievement test results and associated learning gains are published on the Department of Education's website in accordance with such classifications and in an aggregate form as to prevent the identification of any student. Eligible schools shall annually provide to the Superintendent of Public Instruction graduation rates of its students participating in the scholarship program in a manner consistent with nationally recognized standards. In publishing and disseminating achievement test results and other information, the Superintendent of Public Instruction and the Department of Education shall ensure compliance with all student privacy laws.

E. The aggregate amount of scholarships provided to each student for any single school year by all eligible scholarship foundations from eligible donations shall not exceed the lesser of (i) the actual qualified educational expenses of the student or (ii) 100 percent of the per-pupil amount distributed to the local school division (in which the student resides) 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.

F. Scholarship foundations shall develop procedures for disbursing scholarships in periodic payments throughout the school year to ensure scholarships are portable.

G. An annual audit, review, or compilation as required by OMB Circular No. A-133 as may be applicable to nonprofit organizations shall be conducted on a scholarship foundation's tax-credit-derived funds. A summary report of the audit, review, or compilation shall be made available to the public and the Department of Education upon request. The report shall include (i) the total number and dollar amount of donations per locality received during the previous calendar year; (ii) the total number and dollar amount of qualified educational expenses scholarships awarded during the previous calendar year to every (a) student whose family's annual household income was not in excess of 300 percent of the current poverty guidelines or (b) eligible student with a disability; and (iii) the percentage of first-time recipients of qualified educational expenses scholarships.

H. The Department of Education shall publish annually on its website a list of each scholarship foundation qualified under this article. Once a foundation has been qualified by the Department of Education, it shall remain qualified until the Department removes the foundation from its annual list. The Department of Education shall remove a foundation from the annual list if it no longer meets the requirements of this article. The Department of Education may periodically require a qualified foundation to submit updated or additional information for purposes of determining whether or not the foundation continues to meet the requirements of this article.

I. Actions of the Superintendent of Public Instruction or the Department of Education relating to the awarding of tax credits under this article and the qualification of scholarship foundations shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.). Decisions of the Superintendent of Public Instruction or the Department of Education shall be final and not subject to review or appeal.

2. That the Department of Education shall develop guidelines implementing the provisions of Article 13.3 (§ 58.1-439.25 et seq.) of Chapter 3 of Title 58.1, as added by this act. Such guidelines

368 shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the  
369 Code of Virginia).  
370 3. That the provisions of this act providing that a grouping of neighborhood organization affiliates  
371 shall not be approved for more than an aggregate of \$0.825 million in neighborhood assistance tax  
372 credits for all education proposals in any fiscal year shall not be applicable to any grouping of  
373 neighborhood organization affiliates that was approved for more than an aggregate of \$0.5 million  
374 in neighborhood assistance tax credits for education proposals in any fiscal year of the  
375 Commonwealth that ended prior to January 1, 2010.  
376 4. That the third enactment of Chapter 851 of the Acts of Assembly of 2009 is repealed.

**S E N A T E      S U B S T I T U T E**

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