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SENATE BILL NO. 131

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance
on February 14, 2012)

(Patrons Prior to Substitute—Senators Stanley and Obenshain [SB 241])

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 and 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 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 exempt from income taxation under the provisions of §§ 501(c)(3) and 501(c)(4) of the Internal Revenue

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60 Code of 1986, as amended from time to time, or any organization defined as a community action
61 agency in the Economic Opportunity Act of 1964 (42 U.S.C. § 2701 et seq.), or any housing authority
62 as defined in § 36-3.

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

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

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

74 § 58.1-439.19. Public policy; business firms; donations.

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

77 § 58.1-439.20. Proposals; regulations; tax credits authorized; amount for programs.

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

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

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

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

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

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

127 D. The total amount of tax credits granted for programs approved under this article for each fiscal
128 year shall not exceed ~~\$11.9~~ \$15 million allocated as follows: ~~\$4.9~~ \$8 million for education proposals for
129 approval by the Superintendent of Public Instruction and \$7 million for all other proposals for approval
130 by the Commissioner of the State Department of Social Services. ~~If the amount of tax credits requested~~
131 ~~by neighborhood organizations and approved by the Superintendent for education proposals is less than~~
132 ~~\$4.9 million, then the balance of such amount shall be allocated to programs for approval by the~~
133 ~~Commissioner of the State Department of Social Services.~~ The Superintendent and the Commissioner of
134 the State Department of Social Services shall work cooperatively for purposes of ensuring that
135 neighborhood organization proposals are submitted to the proper state agency. The Superintendent and
136 the Commissioner of the State Department of Social Services may request the assistance of the
137 Department of Taxation for purposes of determining whether or not anticipated donations for which tax
138 credits are requested by a neighborhood organization likely qualify as a charitable donation under federal
139 tax laws and regulations.

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

146 F. The issuance of tax credits under this article shall expire on July 1, ~~2014~~ 2017.

147 § 58.1-439.21. Tax credit; amount; limitation; carry over.

148 A. The Superintendent of Public Instruction and the Commissioner of the State Department of Social
149 Services shall certify to the Department of Taxation, or in the case of business firms subject to a tax
150 under Article 1 (§ 58.1-2500 et seq.) of Chapter 25 or Article 2 (§ 58.1-2620 et seq.) of Chapter 26, to
151 the State Corporation Commission, the applicability of the tax credit provided herein for a business firm.

152 B. A business firm shall be eligible for a credit against the taxes imposed by Articles 2 (§ 58.1-320
153 et seq.), 6 (§ 58.1-360 et seq.), and 10 (§ 58.1-400 et seq.) of Chapter 3, Chapter 12 (§ 58.1-1200 et
154 seq.), Article 1 (§ 58.1-2500 et seq.) of Chapter 25, or Article 2 (§ 58.1-2620 et seq.) of Chapter 26, in
155 an amount equal to ~~40~~ 65 percent of the value of the money, property, professional services, and
156 contracting services donated by the business firm during its taxable year to neighborhood organizations
157 for programs approved pursuant to § 58.1-439.20. Notwithstanding any other law and for purposes of
158 this article, the value of a motor vehicle donated by a business firm shall, in all cases, be such value as
159 determined for federal income tax purposes using the laws and regulations of the United States relating
160 to federal income taxes. No tax credit of less than \$400 shall be granted for any donation, and a
161 business firm shall not be allowed a tax credit in excess of \$175,000 per taxable year. No tax credit
162 shall be granted to any business firm for donations to a neighborhood organization providing job
163 training or education for individuals employed by the business firm. Any tax credit not usable for the
164 taxable year the donation was made may be carried over to the extent usable for the next five
165 succeeding taxable years or until the full credit has been utilized, whichever is sooner. Credits granted to
166 a partnership, electing small business (Subchapter S) corporation, or limited liability company shall be
167 allocated to their individual partners, shareholders, or members, respectively, in proportion to their
168 ownership or interest in such business entities.

169 C. A tax credit shall be issued by the Superintendent of Public Instruction or the Commissioner of
170 the State Department of Social Services to a business firm upon receipt of a certification made by a
171 neighborhood organization to whom tax credits were allocated for an approved program pursuant to
172 § 58.1-439.20. The certification shall identify the type and value of the donation received and the
173 business firm making the donation. A business firm shall be eligible for a tax credit under this section
174 only to the extent that sufficient tax credits allocated to the neighborhood organization for an approved
175 project are available.

176 § 58.1-439.24. Donations by individuals.

177 For purposes of this section, the term "individual" means the same as that term is defined in
178 § 58.1-302, but excluding any individual included in the definition of a "business firm" as such term is
179 defined in § 58.1-439.18.

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

183 in this section.

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

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

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

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

207 *Article 13.3.*

208 *Education Improvement Scholarships Tax Credits.*

209 *§ 58.1-439.25. Definitions.*

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

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

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

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

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

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

229 *§ 58.1-439.26. Tax credit for donations to certain scholarship foundations.*

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

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

244 B. *Tax credits shall be awarded to persons making monetary donations to scholarship foundations by*

245 the Department of Education on a first-come, first-served basis in accordance with procedures
246 established by the Department of Education under the following conditions:

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

249 2. The amount of the credit shall not exceed the person's tax liability pursuant to Article 2
250 (§ 58.1-320 et seq.) or Article 10 (§ 58.1-400 et seq.), Chapter 12 (§ 58.1-1200 et seq.), Chapter 25
251 (§ 58.1-2500 et seq.), or Article 2 (§ 58.1-2620 et seq.) of Chapter 26, as applicable, for the taxable
252 year in which the monetary donation was made. Any credit not usable for the taxable year following the
253 taxable year of the monetary donation may be carried over for credit against the taxes imposed upon
254 the person pursuant to Article 2 (§ 58.1-320 et seq.) or Article 10 (§ 58.1-400 et seq.), Chapter 12
255 (§ 58.1-1200 et seq.), Chapter 25 (§ 58.1-2500 et seq.), or Article 2 (§ 58.1-2620 et seq.) of Chapter 26,
256 as applicable, in the next five succeeding taxable years or until the total amount of the tax credit has
257 been taken, whichever is sooner.

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

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

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

272 § 58.1-439.27. Scholarship foundation eligibility and requirements; list of foundations receiving
273 donations.

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

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

283 § 58.1-439.28. Guidelines for scholarship foundations.

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

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

303 C. In awarding scholarships from tax-credit-derived funds, the scholarship foundation shall (i)
304 provide scholarships for qualified educational expenses only to students whose family's annual
305 household income is not in excess of 300 percent of the current poverty guidelines or eligible students

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

313 D. Scholarship foundations shall ensure that schools selected by students to which tax-credit-derived
314 funds may be paid (i) are in compliance with the Commonwealth's and locality's health and safety laws
315 and codes; (ii) hold a valid occupancy permit as required by the locality; (iii) comply with Title VI of
316 the Civil Rights Act of 1964, as amended; and (iv) are nonpublic schools that comply with nonpublic
317 school accreditation requirements as set forth in § 22.1-19 and administered by the Virginia Council for
318 Private Education or nonpublic schools that maintain an assessment system that annually measures
319 scholarship students' progress in reading and math using a national norm-referenced achievement test,
320 including but not limited to the Stanford Achievement Test, California Achievement Test, and Iowa Test
321 of Basic Skills.

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

337 E. The aggregate amount of scholarships provided to each student for any single school year by all
338 eligible scholarship foundations from eligible donations shall not exceed the lesser of (i) the actual
339 qualified educational expenses of the student or (ii) 100 percent of the per-pupil amount distributed to
340 the local school division (in which the student resides) as the state's share of the standards of quality
341 costs using the composite index of ability to pay as defined in the general appropriation act.

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

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

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

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

365 2. That the Department of Education shall develop guidelines implementing the provisions of
366 Article 13.3 (§ 58.1-439.25 et seq.) of Chapter 3 of Title 58.1, as added by this act. Such guidelines
367 shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the

368 Code of Virginia).

369 3. That the Department of Taxation shall submit a report concerning the tax credits set forth in
370 Article 13.2 (§ 58.1-439.18 et seq.) and Article 13.3 (§ 58.1-439.25 et seq.) of Chapter 3 of Title 58.1
371 of the Code of Virginia to the House Committee on Appropriations, the House Committee on
372 Finance, and the Senate Committee on Finance no later than November 15 of the year
373 immediately preceding any taxable year or calendar year in which the credit is due to expire. Such
374 report shall include (i) the number of persons, corporations, or other classes of taxpayers claiming
375 the tax credit in each of the immediately preceding five years, (ii) the aggregate amount of credits
376 claimed in each of the preceding five years by each class of taxpayers, (iii) the average amount of
377 the credit claimed by each class of taxpayers in each of the preceding five years, (iv) the average
378 amount of taxes paid, after claiming any credits or deductions, by each class of taxpayers claiming
379 the tax credit in each of the preceding five years, (v) any noted trends in the use of the tax credit,
380 and (vi) any other information deemed relevant by the Department of Taxation. For purposes of
381 the tax credit set forth under Article 13.3 (§ 58.1-439.25 et seq.) of Chapter 3 of Title 58.1 such
382 information in clauses (i) through (vi) shall be provided for all immediately preceding years in
383 which the tax credit was in effect. All other agencies of the Commonwealth involved in the
384 administration of the tax credit shall provide any information requested by the Department of
385 Taxation to assist in the formulation of the report.