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## SENATE BILL NO. 241

Offered January 11, 2012

Prefiled January 10, 2012

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.

Patrons—Obenshain and Black

Referred to Committee on Finance

## 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 individuals 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

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59 function is providing neighborhood assistance for ~~impoverished people~~, and holding a ruling from the  
60 Internal Revenue Service of the United States Department of the Treasury that the organization is  
61 exempt from income taxation under the provisions of §§ 501(c)(3) and 501(c)(4) of the Internal Revenue  
62 Code of 1986, as amended from time to time, or any organization defined as a community action  
63 agency in the Economic Opportunity Act of 1964 (42 U.S.C. § 2701 et seq.), or any housing authority  
64 as defined in § 36-3.

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

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

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

76 § 58.1-439.19. Public policy; business firms; donations.

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

79 § 58.1-439.20. Proposals; regulations; tax credits authorized; amount for programs.

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

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

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

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

110 Notwithstanding any other provision of law, (i) no more than an aggregate of \$0.5 million in tax  
111 credits shall be approved in a fiscal year to a neighborhood organization or to a grouping of  
112 neighborhood organization affiliates for all education proposals, and (ii) no more than an aggregate of  
113 \$0.5 million in tax credits shall be approved in a fiscal year to a neighborhood organization or to a  
114 grouping of neighborhood organization affiliates for all other proposals combined.

115 D. The total amount of tax credits granted for programs approved under this article for each fiscal  
116 year shall not exceed \$11.9 million allocated as follows: \$4.9 million for education proposals for  
117 approval by the Superintendent of Public Instruction and \$7 million for all other proposals for approval  
118 by the Commissioner of the State Department of Social Services. If the amount of tax credits requested  
119 by neighborhood organizations and approved by the Superintendent for education proposals is less than  
120 \$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.~~

§ 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~~ 64 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 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~~ 64 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 allowed pursuant to this section.

E. A tax credit shall be issued by the Superintendent of Public Instruction or the Commissioner of the State Department of Social Services to an individual only 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 individual making the donation.

#### Article 13.3.

##### *Education Improvement Scholarships Tax Credits.*

###### *§ 58.1-439.25. Definitions.*

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

*"Business entity" means a business that is subject to the taxes imposed by Article 10 (§ 58.1-400 et seq.), Chapter 12 (§ 58.1-1200 et seq.), or Chapter 25 (§ 58.1-2500 et seq.).*

*"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.*

*"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.*

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

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

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

###### *§ 58.1-439.26. Tax credit for donations to scholarship foundations by business entities.*

A. For taxable years beginning on or after January 1, 2012, a business entity may receive a credit against any tax due under Article 10 (§ 58.1-400 et seq.), Chapter 12 (§ 58.1-1200 et seq.), or Chapter 25 (§ 58.1-2500 et seq.) in an amount equal to 84 percent of its monetary contribution to a scholarship foundation included on the list published annually by the Department of Education in accordance with the provisions of § 58.1-439.28. The credit shall be allowed to be claimed for the taxable year following the year of such contribution.

B. Tax credits shall be awarded to business entities 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 section shall not exceed \$50 million.

2. Any tax credit that is not used by a business entity for the taxable year following the year in which the contribution is made shall be refundable.

3. Every business entity 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 business entity during the taxable year.

C. In a form approved by the Department of Education, the business entity or a scholarship foundation on behalf of a business entity 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 contribution from the business entity to the scholarship foundation, which shall, within 20 days, return the notice to the Department of Education certifying the amount of the monetary contribution and date received. Preauthorization notices not acted upon by the business entity 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 business entity's normal course of business.

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

A. Scholarship foundations 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 foundations. 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 information is submitted. Any approval shall not be withheld unreasonably.

B. The Department of Education shall submit a list of all scholarship foundations receiving contributions 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 over the long term disburse an amount that is not less than 90 percent of its tax-credit-derived funds 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.

B. In awarding scholarships from tax-credit-derived funds, the scholarship foundation shall (i) provide scholarships to any student whose family's annual household income is not in excess of 300 percent of the current poverty guidelines or any eligible student 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 the scholarship 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 business entities receiving tax credits for the same pursuant to this article.

C. Scholarship foundations shall ensure that eligible 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) 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 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.

D. The amount of a scholarship provided to any student for any single school year by all eligible scholarship foundations from eligible contributions shall not exceed the lesser of (i) the actual qualified educational expenses or (ii) 100 percent of 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.

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

F. 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

305 *the Department of Education upon request. The report shall include (i) the total number and dollar*  
306 *amount of contributions per locality received during the previous calendar year; (ii) the total number*  
307 *and dollar amount of qualified educational expenses scholarships awarded during the previous calendar*  
308 *year to every (a) student whose family's annual household income was not in excess of 300 percent of*  
309 *the current poverty guidelines or (b) eligible student with a disability; and (iii) the percentage of*  
310 *first-time recipients of qualified educational expenses scholarships.*

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

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

323 **2. That the Department of Education shall develop guidelines implementing the provisions of**  
324 **Article 13.3 (58.1-439.25 et seq.) of Chapter 3 of Title 58.1 of the Code of Virginia. Such guidelines**  
325 **shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the**  
326 **Code of Virginia).**