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HOUSE BILL NO. 742**AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the Senate Committee on Finance
on February 17, 2016)

(Patron Prior to Substitute—Delegate Toscano)

*A BILL to amend and reenact §§ 58.1-439.18 and 58.1-439.20 of the Code of Virginia, relating to Neighborhood Assistance Program tax credits.***Be it enacted by the General Assembly of Virginia:****1. That §§ 58.1-439.18 and 58.1-439.20 of the Code of Virginia are amended and reenacted as follows:****§ 58.1-439.18. Definitions.**

As used in this article:

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

"Business firm" means any corporation, partnership, electing small business (Subchapter S) corporation, limited liability company, or sole proprietorship authorized to do business in this Commonwealth subject to tax imposed by Articles 2 (§ 58.1-320 et seq.) and 10 (§ 58.1-400 et seq.) of Chapter 3, Chapter 12 (§ 58.1-1200 et seq.), Article 1 (§ 58.1-2500 et seq.) of Chapter 25, or Article 2 (§ 58.1-2620 et seq.) of Chapter 26. "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 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 low-income persons or (ii) buildings used by neighborhood organizations.

"Education" means any type of scholastic instruction or scholastic assistance to 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 low-income persons.

"Job training" means any type of instruction to an individual who is 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 and holding a ruling from the Internal Revenue Service of the United States Department of the Treasury that the organization is exempt from income taxation under the provisions of §§ 501(c)(3) and 501(c)(4) of the Internal Revenue Code of 1986, as amended from time to time, or any organization defined as a community action agency in the Economic Opportunity Act of 1964 (42 U.S.C. § 2701 et seq.), or any housing authority as defined in § 36-3.

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

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

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

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

66 **§ 58.1-439.20. Proposals; regulations; tax credits authorized; amount for programs.**

67 A. Any neighborhood organization may submit a proposal, other than education proposals, to the
68 Commissioner of the State Department of Social Services requesting an allocation of tax credits for use
69 by business firms making donations to the neighborhood organization. Neighborhood organizations may
70 submit education proposals to the Superintendent of Public Instruction requesting an allocation of tax
71 credits for use by business firms making donations to the neighborhood organization.

72 The proposal shall set forth the program to be conducted by the neighborhood organization, the
73 low-income persons or eligible students with disabilities to be assisted, the estimated amount to be
74 donated to the program, and the plans for implementing the program.

75 B. 1. The State Board of Social Services and the Department of Education are hereby authorized to
76 adopt regulations (or, alternatively, guidelines in the case of the Department of Education) for the
77 approval or disapproval of such proposals by neighborhood organizations and for determining the value
78 of the donations. Such regulations or guidelines shall contain a requirement that a neighborhood
79 organization shall have been in existence for at least one year. Also, such regulations or guidelines shall
80 contain a requirement that as a prerequisite for approval, neighborhood organizations with total revenues
81 (including the value of all donations) (i) in excess of \$100,000 for the organization's most recent year
82 ended provide to the State Board of Social Services or the Department of Education, as applicable, an
83 audit or review for such year performed by an independent certified public accountant or (ii) of
84 \$100,000 or less for the organization's most recent year ended, provide to the State Board of Social
85 Services or the Department of Education, as applicable, a compilation for such year performed by an
86 independent certified public accountant. No proposal for an allocation of tax credits shall be untimely
87 filed solely because such audit, review, or compilation was not submitted by the neighborhood
88 organization by the proposal filing deadline, provided that the audit, review, or compilation is submitted
89 to the State Board of Social Services or the Department of Education, as applicable, within the 30-day
90 period immediately following such deadline.

91 Such regulations or guidelines by the Department of Education shall provide that at least 50 percent
92 of the persons served by the neighborhood organization ~~are~~ be low-income persons or eligible students
93 with disabilities; and that at least 50 percent of the neighborhood organization's revenues ~~are~~ be used to
94 provide services to low-income persons or to eligible students with disabilities. Such regulations by the
95 State Board of Social Services shall provide that at least 50 percent of the persons served by the
96 neighborhood organization ~~are~~ be low-income persons as defined in § 58.1-439.18.

97 In order for a proposal to be approved, the applicant neighborhood organization and any of its
98 affiliates shall meet the requirements of the application regulations or guidelines.

99 2. The requirements for proposals submitted to the Superintendent of Public Instruction that ~~(a)~~ (i) at
100 least 50 percent of the persons served by the neighborhood organization and each of its affiliates ~~are~~ be
101 low-income persons or eligible students with disabilities and ~~(b)~~ (ii) at least 50 percent of the revenues
102 of the neighborhood organization and each of its affiliates ~~are~~ be used to provide services to such
103 persons shall not apply to any neighborhood organization for tax credit allocations beginning for fiscal
104 year 2014-2015 and ending with tax credit allocations for fiscal year 2019-2020, provided that ~~(1)~~(a) the
105 neighborhood organization received an allocation of tax credits for fiscal year 2011-2012 allocations, ~~(2)~~
106 (b) at least 50 percent of the persons served by the neighborhood organization are low-income persons
107 or eligible students with disabilities, ~~(3)~~ (c) at least 50 percent of the neighborhood organization's
108 revenues are used to provide services to such persons, and ~~(4)~~ (d) none of the affiliates of the
109 neighborhood organization receives an allocation of tax credits for ~~any~~ the program year of such
110 five-year period.

111 3. Beginning with tax credit allocations for fiscal year 2016-2017 and thereafter, the requirements
112 for a proposal submitted by a neighborhood organization to the Commissioner of Social Services that (i)
113 at least 50 percent of the persons served by each affiliate of the neighborhood organization be
114 low-income persons, (ii) at least 50 percent of the revenues of each affiliate of the neighborhood
115 organization be used to provide services to such persons, (iii) each affiliate also meet the definition of
116 "neighborhood organization" under § 58.1-439.18, and (iv) an audit, review, or compilation for each
117 affiliate be furnished to the Commissioner of Social Services shall not apply in determining the
118 eligibility of the neighborhood organization submitting a proposal, provided that (a) the neighborhood
119 organization otherwise meets all statutory requirements and regulations, (b) the neighborhood
120 organization received a fiscal year 2013-2014 allocation of neighborhood assistance tax credits, and (c)
121 no affiliate of the neighborhood organization submits a proposal for or receives an allocation of tax

credits pursuant to this article for the program year for which the neighborhood organization has submitted its proposal.

~~Such~~ 4. The regulations or guidelines shall provide for the equitable allocation of the available amount of tax credits among the approved proposals submitted by neighborhood organizations. The regulations or guidelines shall also provide that at least 10 percent of the available amount of tax credits each year shall be allocated to qualified programs proposed by neighborhood organizations not receiving allocations in the preceding year; however, if the amount of tax credits for qualified programs requested by such neighborhood organizations is less than 10 percent of the available amount of tax credits, the unallocated portion of such 10 percent of the available amount of tax credits shall be allocated to qualified programs proposed by other neighborhood organizations.

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

Notwithstanding any other provision of law, (i) no more than an aggregate of \$0.825 million in tax credits shall be approved in a fiscal year to a neighborhood organization or to a grouping of neighborhood organization affiliates for all education proposals, and (ii) no more than an aggregate of \$0.5 million in tax credits shall be approved in a fiscal year to a neighborhood organization or to a grouping of neighborhood organization affiliates for all other proposals combined. However, if the State Department of Social Services or the Department of Education after the initial allocation of tax credits to approved proposals has a balance of tax credits remaining for the fiscal year that can be used or allocated by a neighborhood organization for a proposal that had been approved for tax credits during the initial allocation by the State Department of Social Services or the Department of Education, then (a) the Commissioner of ~~the State Department~~ of Social Services or the Superintendent of Public Instruction, as applicable, shall reallocate the remaining balance of tax credits to such previously approved proposals to the extent that a neighborhood organization can use or allocate additional tax 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 the following: for education proposals for approval by the Superintendent of Public Instruction, \$8 million for fiscal year 2013-2014, \$8.5 million for fiscal year 2014-2015, and \$9 million for fiscal year 2015-2016 and each fiscal year thereafter; and for all other proposals for approval by the Commissioner of ~~the State Department~~ of Social Services, \$7 million for fiscal year 2013-2014, \$7.5 million for fiscal year 2014-2015, and \$8 million for fiscal year 2015-2016 and each fiscal year thereafter.

The Superintendent of *Public Instruction* 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 of *Public Instruction* 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 of *Public Instruction* 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 of *Public Instruction* or the Department of Education shall be final and not subject to review or appeal.

F. Notwithstanding the provisions of § 30-19.1:11, the issuance of tax credits under this article shall expire on July 1, 2028.