

17101262D

SENATE BILL NO. 1167

Offered January 11, 2017

Prefiled January 9, 2017

A *BILL to amend and reenact §§ 58.1-439.20 and 58.1-439.26 of the Code of Virginia, relating to tax credits related to education; aggregate cap.*

Patrons—DeSteph; Delegate: Knight

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-439.20 and 58.1-439.26 of the Code of Virginia are amended and reenacted as follows:

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

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

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

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

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

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

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

3. Beginning with tax credit allocations for fiscal year 2016-2017 and thereafter, the requirements for a proposal submitted by a neighborhood organization to the Commissioner of Social Services that (i) at

INTRODUCED

SB1167

59 least 50 percent of the persons served by each affiliate of the neighborhood organization be low-income
60 persons, (ii) at least 50 percent of the revenues of each affiliate of the neighborhood organization be
61 used to provide services to such persons, (iii) each affiliate also meet the definition of "neighborhood
62 organization" under § 58.1-439.18, and (iv) an audit, review, or compilation for each affiliate be
63 furnished to the Commissioner of Social Services shall not apply in determining the eligibility of the
64 neighborhood organization submitting a proposal, provided that (a) the neighborhood organization
65 otherwise meets all statutory requirements and regulations, (b) the neighborhood organization received a
66 fiscal year 2013-2014 allocation of neighborhood assistance tax credits, and (c) no affiliate of the
67 neighborhood organization submits a proposal for or receives an allocation of tax credits pursuant to this
68 article for the program year for which the neighborhood organization has submitted its proposal.

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

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

83 Notwithstanding any other provision of law, (i) no more than an aggregate of \$0.825 million in tax
84 credits shall be approved in a fiscal year to a neighborhood organization or to a grouping of
85 neighborhood organization affiliates for all education proposals, and (ii) no more than an aggregate of
86 \$0.5 million in tax credits shall be approved in a fiscal year to a neighborhood organization or to a
87 grouping of neighborhood organization affiliates for all other proposals combined. However, if the State
88 Department of Social Services or the Department of Education after the initial allocation of tax credits
89 to approved proposals has a balance of tax credits remaining for the fiscal year that can be used or
90 allocated by a neighborhood organization for a proposal that had been approved for tax credits during
91 the initial allocation by the State Department of Social Services or the Department of Education, then (a)
92 the Commissioner of Social Services or the Superintendent of Public Instruction, as applicable, shall
93 reallocate the remaining balance of tax credits to such previously approved proposals to the extent that a
94 neighborhood organization can use or allocate additional tax credits for the previously approved proposal
95 and (b) the \$0.825 and \$0.5 million annual limitations for tax credits approved to a grouping of
96 neighborhood organization affiliates shall be inapplicable to the extent of any balance of tax credits
97 reallocated under clause (a). The balance of tax credits remaining for reallocation shall include the
98 amount of any tax credits that have been granted for a proposal approved during the initial allocation
99 but for which the Commissioner of Social Services or the Superintendent of Public Instruction has been
100 provided notice by the neighborhood organization that it will not be able to use or allocate such amount
101 for the approved proposal.

102 D. The total amount of tax credits granted for programs approved under this article for each fiscal
103 year shall not exceed the following: for education proposals for approval by the Superintendent of
104 Public Instruction, \$8 million for fiscal year 2013-2014, \$8.5 million for fiscal year 2014-2015, and \$9
105 million for fiscal year 2015-2016 and each fiscal year thereafter years 2015-2017, and \$9 million plus
106 20 percent of any unused Education Improvement Scholarships tax credits from the immediately
107 preceding fiscal year pursuant to § 58.1-439.26 for fiscal year 2017-2018 and each fiscal year
108 thereafter; and for all other proposals for approval by the Commissioner of Social Services, \$7 million
109 for fiscal year 2013-2014, \$7.5 million for fiscal year 2014-2015, and \$8 million for fiscal year
110 2015-2016 and each fiscal year thereafter.

111 The Superintendent of Public Instruction and the Commissioner of Social Services shall work
112 cooperatively for purposes of ensuring that neighborhood organization proposals are submitted to the
113 proper state agency. The Superintendent of Public Instruction and the Commissioner of Social Services
114 may request the assistance of the Department of Taxation for purposes of determining whether or not
115 anticipated donations for which tax credits are requested by a neighborhood organization likely qualify
116 as a charitable donation under federal tax laws and regulations.

117 E. Actions of (i) the State Department of Social Services, or the Commissioner of the same, or (ii)
118 the Superintendent of Public Instruction or the Department of Education relating to the review of
119 neighborhood organization proposals and the allocation of tax credits to proposals shall be exempt from
120 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.

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

A. Notwithstanding the provisions of § 30-19.1:11, for taxable years beginning on or after January 1, 2013, but before January 1, 2028, a person shall be eligible to earn a credit against any tax due under 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 in an amount equal to 65 percent of the value of the monetary or marketable securities donation made by the person 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.

No tax credit shall be allowed under this article if the value of the monetary or marketable securities donation made by an individual is less than \$500. In addition, tax credits shall be issued only for the first \$125,000 in value of donations made by the individual during the taxable year. The maximum aggregate donations of \$125,000 for the taxable year for which tax credits may be issued and the minimum required donation of \$500 shall apply on an individual basis. Such limitation on the maximum amount of tax credits issued to an individual shall not apply to credits issued to any business entity, including a sole proprietorship.

B. Tax credits shall be issued to persons making monetary or marketable securities 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 issued each fiscal year under this article shall not exceed \$25 million. *In any fiscal year in which \$25 million of credits are not issued under this article, 20 percent of the unissued credits for the fiscal year shall be made available to the Superintendent of Public Instruction for allocation to education programs under the Neighborhood Assistance Act tax credit program pursuant to Article 13.2 (§ 58.1-439.18 et seq.).*

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 for which the credit is claimed. Any credit not usable for the taxable year for which first allowed 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.

C. In a form approved by the Department of Education, the person seeking to make a monetary or marketable securities 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 or marketable securities donation from the person to the scholarship foundation, which shall, within 40 days, return the notice to the Department of Education certifying the value and type of donation and date received. Upon receipt and approval by the Department of Education of the preauthorization notice with required supporting documentation and certification of the value and type of the donation by the scholarship foundation, the Superintendent of Public Instruction shall as soon as practicable, and in no case longer than 30 days, issue a tax credit certificate to the person eligible for the tax credit. The person shall attach the tax credit certificate to the applicable tax return filed with the Department of Taxation or the State Corporation Commission, as applicable. The Department of Education shall provide a copy of the tax credit certificate to the scholarship foundation.

Preauthorization notices not acted upon by a donor within 180 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.