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SENATE BILL NO. 579

Senate Amendments in [] - February 1, 2018

A BILL to amend and reenact §§ 58.1-439.20:1 and 58.1-439.26 of the Code of Virginia, relating to credits related to education; unissued credits.

Patron Prior to Engrossment—Senator DeSteph

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

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

§ 58.1-439.20:1. Proposals to the Department of Education; guidelines; tax credits authorized.

A. Any neighborhood organization 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. All other neighborhood organization proposals shall be submitted to the Commissioner or Social Services pursuant to § 58.1-439.20.

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 Department of Education is hereby authorized to adopt guidelines for the approval or disapproval of such proposals by neighborhood organizations and for determining the value of the donations.

2. In order to be eligible to receive an allocation of tax credits pursuant to this article, a neighborhood organization shall have been in existence for at least one year. As a prerequisite for approval, neighborhood organizations with total revenues of (i) more than \$100,000 shall provide to the Department of Education an audit or review for the most recent year or (ii) \$100,000 or less shall provide to the Department of Education a compilation for the most recent year. Such audit, review, or compilation shall be performed by an independent certified public accountant. For purposes of this subdivision, "total revenues" means all revenues, including the value of all donations, for the organization's most recent year. 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 Superintendent of Public Instruction within the 30-day period immediately following such deadline.

3. In order to be eligible to receive an allocation of credits pursuant to this article, at least 50 percent of the persons served by the neighborhood organization shall be low-income persons or eligible students with disabilities and at least 50 percent of the neighborhood organization's revenues shall be used to provide services to low-income persons or to eligible students with disabilities. Expenditures for teacher salaries shall count toward the requirement that at least 50 percent of revenues be used to provide services to low-income persons or to eligible students with disabilities.

4. In order for a proposal to be approved, an applicant neighborhood organization and any of its affiliates shall meet the requirements of this section and the application guidelines. However, beginning with tax credit allocations for fiscal year 2014-2015 and ending with tax credit allocations for fiscal year 2019-2020, such requirement for a proposal submitted by a neighborhood organization to the Superintendent of Public Instruction shall not apply in determining eligibility of the neighborhood organization submitting the proposal, provided that (i) the neighborhood organization otherwise meets all statutory requirements and regulations, (ii) the neighborhood organization received a fiscal year 2011-2012 allocation of neighborhood assistance tax credits, and (iii) 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.

5. The guidelines shall provide for the equitable allocation of the available amount of tax credits among the approved proposals submitted by neighborhood organizations. In any year in which the available amount of tax credits exceeds the previous year's available amount, at least 10 percent of the excess amount shall be allocated to qualified programs proposed by neighborhood organizations that did not receive any allocations in the preceding year. If the amount of tax credits requested by such neighborhood organizations is less than 10 percent of the excess amount, the unallocated portion of such 10 percent shall be allocated to qualified programs proposed by other neighborhood organizations.

C. 1. If 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

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60 making donations to the approved program. A neighborhood organization shall not assign or transfer an
61 allocation of tax credits to another neighborhood organization without the approval of the Superintendent
62 of Public Instruction.

63 2. Notwithstanding any other provision of law, no more than an aggregate of \$0.825 million in tax
64 credits shall be approved in a fiscal year to a neighborhood organization or to a grouping of
65 neighborhood organization affiliates for all education proposals.

66 3. If, after the initial allocation of credits to approved proposals, the Department of Education has a
67 balance of tax credits remaining for the fiscal year that can be used or allocated by a neighborhood
68 organization for a proposal that had been approved for tax credits during the initial allocation, then the
69 Superintendent of Public Instruction shall reallocate the remaining balance of tax credits to such
70 previously approved proposals to the extent that a neighborhood organization can use or allocate
71 additional tax credits for the previously approved proposal. The \$0.825 million annual limitations for tax
72 credits approved to a grouping of neighborhood organization affiliates shall be inapplicable for such
73 reallocation of any balance of tax credits. The balance of tax credits remaining for reallocation shall
74 include the amount of any tax credits that have been granted for a proposal approved during the initial
75 allocation but for which the Superintendent of Public Instruction received notice from the neighborhood
76 organization that it will not be able to use or allocate such amount for the approved proposal.

77 D. The total amount of tax credits granted for programs approved by the Superintendent of Public
78 Instruction under this article for each fiscal year shall not exceed \$9 million for fiscal year 2015-2016
79 years 2015-2018, and \$9 million plus 20 percent of any unissued Education Improvement Scholarships
80 tax credits from the immediately preceding fiscal year pursuant to § 58.1-439.26 for fiscal year
81 2018-2019 and each fiscal year thereafter.

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

88 E. Actions of the Superintendent of Public Instruction or the Department of Education relating to the
89 review of neighborhood organization proposals and the allocation of tax credits to proposals shall be
90 exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.). Decisions of the
91 Superintendent of Public Instruction or the Department of Education shall be final and not subject to
92 review or appeal.

93 **§ 58.1-439.26. Tax credit for donations to certain scholarship foundations.**

94 A. Notwithstanding the provisions of § 30-19.1:11, for taxable years beginning on or after January 1,
95 2013, but before January 1, 2028, a person shall be eligible to earn a credit against any tax due under
96 Article 2 (§ 58.1-320 et seq.) or Article 10 (§ 58.1-400 et seq.), Chapter 12 (§ 58.1-1200 et seq.),
97 Chapter 25 (§ 58.1-2500 et seq.), or Article 2 (§ 58.1-2620 et seq.) of Chapter 26 in an amount equal to
98 65 percent of the value of the monetary or marketable securities donation made by the person to a
99 scholarship foundation included on the list published annually by the Department of Education in
100 accordance with the provisions of § 58.1-439.28.

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

108 B. Tax credits shall be issued to persons making monetary or marketable securities donations to
109 scholarship foundations by the Department of Education on a first-come, first-served basis in accordance
110 with procedures established by the Department of Education under the following conditions:

111 1. The total amount of tax credits that may be issued each fiscal year under this article shall not
112 exceed \$25 million. *In any fiscal year in which \$25 million of credits are not issued under this article,*
113 *20 percent of the unissued credits for the fiscal year shall be made available to the Superintendent of*
114 *Public Instruction for allocation to education programs under the Neighborhood Assistance Act tax*
115 *credit program pursuant to Article 13.2 (§ 58.1-439.18 et seq.).*

116 2. The amount of the credit shall not exceed the person's tax liability pursuant to Article 2
117 (§ 58.1-320 et seq.) or Article 10 (§ 58.1-400 et seq.), Chapter 12 (§ 58.1-1200 et seq.), Chapter 25
118 (§ 58.1-2500 et seq.), or Article 2 (§ 58.1-2620 et seq.) of Chapter 26, as applicable, for the taxable year
119 for which the credit is claimed. Any credit not usable for the taxable year for which first allowed may
120 be carried over for credit against the taxes imposed upon the person pursuant to Article 2 (§ 58.1-320 et
121 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.

[2. That the provisions of this act shall not become effective unless an appropriation effectuating the purposes of this act is included in a general appropriation act passed in 2018 by the General Assembly that becomes law.]

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