

DEPARTMENT OF TAXATION

2019 Fiscal Impact Statement

1. **Patron** Frank M. Ruff, Jr.

2. **Bill Number** SB 1160

3. **Committee** Senate Finance

House of Origin:

 X **Introduced**

 Substitute

 Engrossed

4. **Title** Income Tax Credits Related to Education

Second House:

 In Committee

 Substitute

 Enrolled

5. **Summary/Purpose:**

This bill would require that the Superintendent of Public Instruction, when allocating Neighborhood Assistance Act Tax Credits to neighborhood organizations, consider the portion of a neighborhood organization's total revenues that are used to serve low-income persons and eligible students with disabilities and not rely solely on the amounts of credits allocated to the neighborhood organization in the prior year.

This bill would reduce the penalty that scholarship foundations are required to pay under the Education Improvement Scholarship Tax Credit program for failing to distribute at least 90 percent of tax-credit-derived donations in the form of scholarships for the qualified educational expenses of eligible students. Such penalty would be reduced from 200 percent of the difference between 90 percent of credit-derived donations and the actual amount disbursed as scholarships to the amount of such difference.

This bill would allow scholastic assistance organizations to be eligible to receive donations under the Education Improvement Scholarship Tax Credit program and would establish guidelines regarding such organizations.

If enacted during the 2019 Regular Session of the General Assembly, this bill would become effective July 1, 2019.

6. **Budget amendment necessary:** No.

7. **Fiscal Impact Estimates are:** Not available. (See Line 8.)

8. **Fiscal implications:**

Administrative Costs

The Department of Taxation ("the Department") and the Department of Education ("DOE") consider implementation of this bill as routine, and do not require additional funding.

Revenue Impact

The portion of this bill allowing certain donations to scholastic assistance organizations to qualify for Education Improvement Scholarship Tax Credit would result in an unknown negative General Fund revenue impact. Such impact would only exist to the extent that scholastic assistance organizations are able to solicit additional donations that would qualify for the tax credit.

The total amount of Education Improvement Scholarships Tax Credits available in any given fiscal year is capped at \$25 million. DOE issued \$11.50 million in tax credits for Fiscal Year 2018, \$9.75 million in tax credits for Fiscal Year 2017, \$6.75 million in tax credits for Fiscal Year 2016, and \$3.73 million in tax credits for Fiscal Year 2015.

The portion of this bill making changes to the Neighborhood Assistance Act Tax Credit program, modifying the penalty that scholarship foundations may be required to pay under the Education Improvement Scholarships Tax Credits program, and making other technical changes would have no General Fund revenue impact.

9. Specific agency or political subdivisions affected:

Department of Taxation
Department of Education

10. Technical amendment necessary: No.

11. Other comments:

Virginia Neighborhood Assistance Act Tax Credit

The Virginia Neighborhood Assistance Act provides an income tax credit to business firms and individuals that donate to neighborhood organizations for approved programs that benefit impoverished people. The Department of Social Services and the DOE are responsible for approving programs proposed by neighborhood organizations and allocating Neighborhood Assistance Act Tax Credits to neighborhood organizations with approved programs. A business firm or individual that makes a donation to a neighborhood organization for an approved program is then eligible to receive an income tax credit from that neighborhood organization.

The amount of the credit for a business firm or individual who donates professional services is equal to 65 percent of the value of the money, property, professional services, or contracting services donated by such taxpayer to a neighborhood organization for an approved program. No credit less than \$400 may be granted to a business firm or individual who provides professional services for any donation. Therefore, a business firm or individual who provides professional services must make a donation with a value of at least \$616 to meet the minimum credit threshold, and receive an allocation of credits.

The amount of the credit for an individual who makes a monetary donation or marketable securities donation to a neighborhood organization for an approved program is equal to 65 percent of the value of such donation. To receive an allocation of credits, an individual

is required to make a donation of at least \$500. For purposes of determining the amount of credits allocated to an individual, the value of the individual's donation is limited to the lesser of the actual value of the donation or \$125,000. The \$125,000 cap on the value of donations caps the credit at \$81,250 per taxpayer.

DOE is required to equitably allocate credits with respect to education programs equitably. In any year in which the available amount of credits exceeds the previous year's available amount, at least 10 percent of the excess is required to be allocated to qualified programs that did not receive any allocations in the preceding year. The DOE's guidelines regarding this provision require proration of credits to the extent that credit applications exceed the credit cap. However, taxpayers that did not receive an allocation of credits are not subject to proration if the total amount of credits applied for by such organization is 10 percent or less of the total amount credits that are applied for and approved.

Education Improvement Scholarships Tax Credits

Taxpayers are permitted to claim Education Improvement Scholarships Tax Credits in an amount equal to 65 percent of the monetary or marketable securities donation they made to a qualifying scholarship foundation. Tax credits are awarded to taxpayers on a first-come, first-served basis. No tax credit is allowed if the donation is less than \$500. No more than \$125,000 in tax credits may be issued to an individual in a taxable year. The \$125,000 limitation does not apply to tax credits issued to any business entity, including a sole proprietorship. The Education Improvement Scholarships Tax Credit is subject to a \$25 million per fiscal year cap.

Persons seeking to receive and administer tax-credit-approved funds must submit information to the Department of Education, which determines whether an applicant is a qualified scholarship foundation. Notice of approval or denial, including reasons for denial, must be issued by the Department of Education to the applicant within 60 days after the complete information is submitted.

A scholarship foundation that receives donations under the Education Improvement Scholarships Tax Credit program is required to disburse an amount at least equal to 90 percent of the value of the donations it receives during each 12-month period ending on June 30 by the immediately following June 30 for qualified educational expenses through scholarships to eligible students. "Qualified education expense" is defined as school related tuition and instructional fees and materials, including textbooks, workbooks, and supplies used solely for school-related work. Tax-credit-derived funds not used for such scholarships may only be used for the administrative expenses of the scholarship foundation. Any scholarship foundation that fails to meet such disbursement requirements is required to, for the first offense, pay a civil penalty equal to 200 percent of the difference between 90 percent of the value of the tax-credit-derived donations it received in the applicable 12-month period and the amount that was actually disbursed. For a second offense within a five-year period, the scholarship foundation will be prohibited from receiving tax-credit-derived funds for two years.

In awarding scholarships from tax-credit-derived funds, the scholarships foundation must provide scholarships for qualified educational expenses only to eligible students or

qualified students with a disability. "Student" is defined as a child who is a resident of Virginia and:

- In the current school year has enrolled and attended a public school in the Commonwealth for at least one-half of the year;
- For the school year that immediately preceded his receipt of a scholarship foundation scholarship was enrolled and attended a public school in the Commonwealth for at least one-half of the year;
- Is a prior recipient of a scholarship foundation scholarship;
- Is eligible to enter kindergarten or first grade; or
- For the school year that immediately preceded his receipt of a scholarship foundation scholarship was domiciled in a state other than the Commonwealth and did not attend a nonpublic school in the Commonwealth for more than one-half of the school year.

A student as defined above may be eligible for a scholarship provided the annual household income of the student's family is not in excess of 300 percent of the current poverty guidelines. "Eligible student with a disability" is defined as a student:

- For whom an individualized educational program has been written and finalized;
- Whose family's annual income is not in excess of 400 percent of current poverty guidelines; and
- Who otherwise is a "student" as defined above.

The aggregate amount of scholarships provided to each student for any single school year by all eligible scholarship foundations from eligible donations may not exceed the lesser of the actual qualified educational expenses of the student or 100 percent of the per-pupil amount distributed to the local school division in which the student resides as the state's share of the standards of quality costs using the composite index of ability to pay.

Eligible schools are also required to compile certain academic and test results to the Department of Education regarding students receiving tax-credit-derived scholarships.

Proposed Legislation

This bill would require that the Superintendent of Public Instruction, when allocating Neighborhood Assistance Act Tax Credits to neighborhood organizations, consider the portion of a neighborhood organization's total revenues that are used to serve low-income persons and eligible students with disabilities and not rely solely on the amounts of credits allocated to the neighborhood organization in the prior year.

This bill would reduce the penalty that scholarship foundations are required to pay under the Education Improvement Scholarship Tax Credit program for failing to distribute at least 90 percent of tax-credit-derived donations in the form of scholarships for the qualified educational expenses of eligible students. Such penalty would be reduced from 200 percent of the difference between 90 percent of credit-derived donations and the actual amount disbursed as scholarships to the amount of such difference.

This bill would allow scholastic assistance organizations to be eligible to receive donations under the Education Improvement Scholarship Tax Credit program and would establish guidelines for such organizations.

"Scholastic assistance organization" would be defined as a neighborhood organization that also meets certain eligibility requirements and works under contract with a Virginia public school to provide scholastic assistance.

"Scholastic assistance" would be defined as counseling or supportive services to elementary or secondary school students or their parents in developing a postsecondary academic or vocational education plan, including college financing options for such students or their parents, provided by a scholastic assistance organization at a public school with which the organization is under contract.

This bill would require that a scholastic assistance organization that receives donations under the Education Improvement Scholarships Tax Credit program disburse an amount at least equal to 90 percent of the value of the donations it receives during each 12-month period ending on June 30 by the immediately following June 30 for scholastic assistance. Tax-credit-derived funds not used for such assistance may only be used for the administrative expenses of the scholastic assistance organization. Any scholastic assistance organization that fails to meet such disbursement requirements is required to, for the first offense, pay a civil penalty equal to the difference between 90 percent of the value of the tax-credit-derived donations it received in the applicable 12-month period and the amount that was actually disbursed. For a second offense within a five-year period, the scholastic assistance organization will be prohibited from receiving tax-credit-derived funds for two years.

This bill would require that by September 30 of each year beginning in 2020, each scholastic assistance organization must provide the following information to the Department of Education:

- The total number and value of donations received by the organization during the 12-month period ending on June 30 of the prior calendar year for which tax credits were issued by the Superintendent of Public Instruction;
- The dates when such donations were received;
- A description of the types of scholastic assistance provided; and
- The number of students provided scholastic assistance.

Any scholastic assistance organization that fails to provide such report by September 30 would, for the first offense, be required to pay a \$1,000 civil penalty to DOE by November 1 of the same year which would be deposited to the General Fund. For a second offense within a five-year period, a scholastic assistance organization would be removed from the annual list published by DOE and would not be entitled to request preauthorization for additional tax credits nor entitled to receive and administer additional tax-credit-derived funds. In such a case, after two years, a scholastic assistance organization would be eligible to reapply to be included on the annual list and, if after reapplication it is

authorized to be added to the annual list, it would not be considered to have any previous offenses.

This bill would require scholastic assistance organizations that receive donations of marketable securities for which tax credits were issued to sell such securities and convert the donation into cash within 21 days of receipt of the donation.

This bill would require any scholastic assistance organization with total revenues, including the value of all donations, in excess of \$100,000 for the organization's most recently ended fiscal year to have an audit or review of the organization's donations received for such year performed by an independent certified public accountant. Any scholastic assistance organization with total revenues of \$100,000 or less for the organization's most recently ended fiscal year would be required to have a compilation of the organization's donations received for such a year performed by an independent certified public accountant. A summary report of the audit, report, or compilation would be required to be made available to the public and the DOE upon request.

DOE would be required to publish annually on its website a list of each qualified scholastic assistance organization. Once an organization has been qualified by DOE, it would be allowed to remain qualified until it is removed from the annual list. DOE would be required remove an organization if it no longer meets the requirements for the program. DOE would be permitted to periodically require a qualified organization to submit updated or additional information for the purposes of determining whether or not the organization continues to meet the requirements.

Actions of the Superintendent of Public Instruction or the DOE relating to the awarding of tax credits and the qualification of scholastic assistance organizations would be exempt from the provisions of the Administrative Process Act. Decisions of the Superintendent of Public Instruction or the DOE would be final and not subject to review or appeal.

If enacted during the 2019 Regular Session of the General Assembly, this bill would become effective July 1, 2019.

Similar Legislation

House Bill 2351 and **Senate Bill 1365** are identical and would broaden the eligibility criteria for students with a disability and would increase the aggregate amount of scholarships that may be provided to a student with a disability.

House Bill 2459 and **Senate Bill 1015** are similar bills that would expand the Education Improvement Scholarships Tax Credit so that scholarship foundations would be permitted to award scholarships to eligible pre-kindergarten children.

cc : Secretary of Finance

Date: 1/28/2019 JLOF
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