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SENATE BILL NO. 866

Offered January 13, 1999

A BILL to amend the Code of Virginia by adding in Chapter 3 of Title 58.1 an article numbered 3.1, consisting of sections numbered 58.1-339.6 through 58.1-339.11, relating to income tax credits for donations to school tuition organizations and for payment of certain costs associated with the enrollment of children in certain schools; the Virginia Children's Educational Opportunity Act of 1999.

Patrons—Martin and Hanger; Delegates: Black, Cantor, Cox, Harris, Jones, S.C., Katzen, Ruff and Ware

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 3 of Title 58.1 an article numbered 3.1, consisting of sections numbered 58.1-339.6 through 58.1-339.11, as follows:

*Article 3.1.**Virginia Children's Educational Opportunity Act of 1999.**§ 58.1-339.6. Definitions.*

For the purposes of this chapter:

"Academic instruction" means instruction in reading, writing, mathematics, science, history (including art and music history), geography, social studies (including government and citizenship), literature, philosophy, and foreign languages.

"Average per-pupil public expenditure" means the amount obtained by dividing (i) the total of all local, state, and federal expenditures on the public education of children in kindergarten through grade twelve in a year, excluding capital outlays and debt service, in Virginia for such year by (ii) the combined average daily membership of K-12 public schools in Virginia for such year.

"Family" means an individual, the individual's spouse, and any person claimed as a dependent on the individual's income tax return for the taxable year.

"Low-income family" means a family for which the Virginia adjusted gross income amount does not exceed 185 percent of the poverty guideline amount corresponding to a household of an equal number of persons as listed in the poverty guidelines published during the applicable taxable year.

"Poverty guidelines" means the poverty guidelines for the forty-eight 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 school" means either (i) a public elementary or secondary school charging tuition pursuant to subdivision A 2 of § 22.1-5 or § 22.1-269.1 or (ii) a private educational program, including home schooling, that can be used to satisfy the compulsory school attendance requirements of § 22.1-254.

"Qualifying educational expenses" means (i) with respect to a qualified school other than a home school, tuition and other instructional fees charged by the qualified school; and (ii) with respect to home schooling in kindergarten through grade twelve, tutoring fees charged by an individual teacher or a home school correspondence school for academic instruction, including remedial assistance, and the cost of textbooks, workbooks, curricula, and other written materials used primarily for academic instruction.

"School tuition organization" means a charitable organization incorporated in the Commonwealth that (i) is exempt from taxation under § 501 (c) (3) of the Internal Revenue Code, (ii) is organized in part to provide financial assistance for the education of children from low-income families, and (iii) expends 100 percent of its tax credit-qualifying revenues as grants to cover the qualifying educational expenses of children from low-income households at the qualified school of the parent's choice.

"Tax credit-qualifying revenues" means those voluntary cash contributions to a school tuition organization for which a receipt satisfying the requirements of § 58.1-339.9 has been given by the school tuition organization to the donor of the cash contribution.

§ 58.1-339.7. Tax credit for contributions to school tuition organizations.

A. For taxable years beginning on and after January 1, 2000, any taxpayer shall be allowed a nonrefundable credit against any tax imposed pursuant to § 58.1-320 or § 58.1-400 for voluntary cash contributions made by the taxpayer to a school tuition organization, provided that the contributions to the school tuition organization cannot be designated for the direct benefit of any child or dependent of the taxpayer or any member of the taxpayer's family.

B. The amount of the credit allowed to a taxpayer under subsection A shall not exceed the lesser of

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SB866

60 the total amount of the tax imposed on the taxpayer pursuant to § 58.1-320 or § 58.1-400 for the
61 taxable year or (i) for taxable year 2000, \$50 per taxpayer; (ii) for taxable year 2001, \$100 per
62 taxpayer; (iii) for taxable year 2002, \$150 per taxpayer; and (iv) for taxable years 2003 and thereafter,
63 \$200 per taxpayer.

64 C. A taxpayer claiming a credit pursuant to this section shall be ineligible to claim a credit pursuant
65 to § 58.1-339.8 during the same taxable year.

66 D. Amounts claimed under this section shall not also be claimed as an itemized charitable deduction
67 when computing the taxpayer's liability for taxes under § 58.1-320 or § 58.1-400.

68 § 58.1-339.8. Tax credit for certain qualifying educational expenses.

69 A. For taxable years beginning on and after January 1, 2000, taxpayers shall be allowed a
70 nonrefundable credit against any tax imposed pursuant to § 58.1-320 for a percentage of the qualifying
71 educational expenses incurred during the taxable year on behalf of each child who (i) is eligible to be
72 enrolled in a public school in Virginia free of charge pursuant to § 22.1-3; (ii) qualifies as the
73 taxpayer's dependent for federal income tax purposes; and (iii) does not attend a free public school
74 during the semester or other portion of the school year for which such qualified educational expenses
75 were incurred. Subject to the provisions of subsection B, the credit shall be for 100 percent of the
76 qualifying educational expenses incurred during the taxable year on behalf of such children by
77 taxpayers who are members of low-income families, and shall be for eighty percent of the qualifying
78 educational expenses incurred during the taxable year on behalf of such children by taxpayers who are
79 not members of low-income families.

80 B. 1. If the taxpayer is a member of a low-income family, in no event shall the amount of the credit
81 for a child allowed pursuant to subsection A in any taxable year, including carry-over credits allowed
82 by subsection E, exceed the greater of (i) fifty percent of the average per-pupil public expenditure for
83 the Commonwealth's fiscal year ending prior to the commencement of the taxable year during which the
84 credit is claimed or (ii) \$2,500.

85 2. If the taxpayer is not a member of a low-income family, in no event shall the amount of the credit
86 for a child allowed pursuant to subsection A in any taxable year, including carry-over credits allowed
87 by subsection E, (i) for taxable year 2000 exceed ten percent of the average per-pupil public
88 expenditure for the fiscal year ending June 30, 1999; (ii) for taxable year 2001 exceed twenty percent of
89 the average per-pupil public expenditure for the fiscal year ending June 30, 2000; (iii) for taxable year
90 2002 exceed thirty percent of the average per-pupil public expenditure for the fiscal year ending June
91 30, 2001; (iv) for taxable year 2003 exceed forty percent of the average per-pupil public expenditure for
92 the fiscal year ending June 30, 2002; and (v) for taxable years 2004 and thereafter exceed the greater
93 of fifty percent of the average per-pupil public expenditure for the Commonwealth's fiscal year ending
94 prior to the commencement of the taxable year during which the credit is claimed or \$2,500.

95 C. The Secretary of Education shall determine the average per-pupil public expenditure for each
96 fiscal year of the Commonwealth. If the data necessary to determine the average per-pupil public
97 expenditure for a fiscal year is not available, the Secretary of Education shall estimate such amount
98 using the best available data.

99 D. For two taxpayers filing a joint return, the maximum allowable credit per taxpayer shall be fifty
100 percent of the maximum allowable credit per child under subsection B.

101 E. If the amount of the allowable credit exceeds the taxpayer's tax liability for any taxable year, such
102 excess may be carried over and credited against the taxpayer's tax liability in the two succeeding
103 taxable years until the total amount of the credit has been claimed.

104 F. A taxpayer claiming a credit pursuant to this section shall not be eligible to claim a credit
105 pursuant to § 58.1-339.7 during the same taxable year.

106 G. Amounts claimed under this section shall not also be claimed as an itemized deduction when
107 computing the taxpayer's liability for taxes under § 58.1-320.

108 § 58.1-339.9. Forms; regulations.

109 A. The Department of Taxation is authorized to require a taxpayer to submit with the tax return
110 copies of such receipts or similar financial documentation as is necessary to confirm the taxpayer's
111 claim of the credit.

112 B. The Department of Taxation shall promulgate regulations required to implement this article. The
113 regulations shall (i) modify the state individual and corporate tax forms, directions, and worksheets to
114 provide a convenient way for taxpayers to claim a credit under this article; (ii) provide a format for a
115 standardized receipt to be issued by school tuition organizations to indicate the tax credit value of a
116 cash contribution to the school tuition organization, and including the date of the receipt, the name of
117 the donor, the total amount of the contribution, the amount of the donation that can be claimed for a
118 tax credit, the name of the school tuition organization, and the printed name and signature of the agent
119 issuing the receipt on behalf of the school tuition organization; and (iii) provide a format for a
120 standardized receipt to be issued by qualified schools at the conclusion of a student's period of
121 instruction for which qualifying educational expenses have been paid, and including the date of the

receipt, the dates of the student's enrollment for which expenses are being paid, the name of the person paying the expense, the total expenses, the portion of the amount paid toward qualifying educational expenses, the name of the qualified school, and the printed name and signature of the agent issuing the receipt on behalf of the qualified school.

C. Regardless of what documentation the Department of Taxation may require for purposes of allowing credit for payments of qualifying educational expenses, no school or other organization shall be required to provide such documentation or otherwise act to facilitate taxpayers' access to credits under this article, except that schools may be required to fulfill a prior obligation to a taxpayer to provide such information.

§ 58.1-339.10. Additional regulations prohibited.

A. Eligibility of a school or other educational program to be considered a qualified school under this article shall not be conditioned on a school's compliance with any state law or regulation not applicable to all private schools or providers of home schooling in the Commonwealth, with the exception of the financial documentation requirements authorized by § 58.1-339.9.

B. The General Assembly intends that the credits authorized by this article not result in any additional regulation of public or private schools or taxpayers' decisions about the education of their dependent children, except to the minimal extent necessary to provide for the prevention of fraud and the efficient administration of the credits.

§ 58.1-339.11. Annual reports; budgeting.

A. The Tax Commissioner shall determine annually, by type of credit, the total amount of credits claimed under this article on all state income tax returns and shall report the same to the Secretary of Finance and the Secretary of Education.

B. Within sixty days preceding each regular session of the General Assembly, the Secretary of Finance and the Secretary of Education shall present a report to the Chairmen of the Senate Committee on Finance and the House Committee on Appropriations projecting, as of the date of the report, the total amount of credits expected to be claimed under this article on returns for the current taxable year and the following taxable year.