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SENATE BILL NO. 1394

Offered January 19, 2007

A BILL to amend the Code of Virginia by adding in Chapter 3 of Title 58.1 an article numbered 13.2, consisting of sections numbered 58.1-439.18 through 58.1-439.25, and to repeal Chapter 20 (§§ 63.2-2000 through 63.2-2006) of Title 63.2 of the Code of Virginia, relating to the Neighborhood Assistance Act tax credit.

Patron—Stosch

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 13.2, consisting of sections numbered 58.1-439.18 through 58.1-439.25, as follows:

*Article 13.2.**Neighborhood Assistance Act Tax Credit.**§ 58.1-439.18. Definitions.**As used in this article:*

"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 of this title.

"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 impoverished people.

"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 impoverished people or (ii) buildings used by neighborhood organizations.

"Education" means any type of scholastic instruction or scholarship assistance to an individual who is impoverished.

"Housing assistance" means furnishing financial assistance, labor, material, or technical advice to aid the physical improvement of the homes of impoverished people.

"Impoverished people" means people in Virginia approved as such by the State Board of Social Services. Such approval shall be made on the basis of generally recognized low-income criteria used by federal and state agencies.

"Job training" means any type of instruction to an individual who is impoverished that enables him to acquire vocational skills so that he can become employable or able to seek a higher grade of employment.

"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 for impoverished people, 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.

"Professional services" means any type of personal service to the public which requires as a condition precedent to the rendering of such service the obtaining of a license or other legal authorization and shall include, but shall not be limited to, the personal services rendered by medical doctors, dentists, architects, professional engineers, certified public accountants, and attorneys-at-law.

"School for students with disabilities" means the same as that term is defined in § 22.1-319.

"Schools for Students with Disabilities Fund" means the Fund established under § 58.1-439.25.

§ 58.1-439.19. Public policy; business firms; donations.

It is hereby declared to be public policy of the Commonwealth to encourage business firms to make

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59 donations to neighborhood organizations for the benefit of impoverished people.

60 § 58.1-439.20. *Proposals; regulations; tax credits authorized; amount for programs.*

61 A. Any neighborhood organization may submit a proposal to the Commissioner of the State
62 Department of Social Services requesting an allocation of tax credits for use by business firms making
63 donations to the neighborhood organization. The proposal shall set forth the program to be conducted
64 by the neighborhood organization, the impoverished people to be assisted, the estimated amount to be
65 donated to the program and the plans for implementing the program.

66 B. The State Board of Social Services is hereby authorized to adopt regulations for the approval or
67 disapproval of such proposals by neighborhood organizations and for determining the value of the
68 donations. Such regulations shall contain a requirement that an annual audit be provided by the
69 neighborhood organization as a prerequisite for approval. Such regulations shall provide for the
70 equitable allocation of the available amount of tax credits among the approved proposals submitted by
71 neighborhood organizations. The regulations shall also provide that at least 10 percent of the available
72 amount of tax credits each year shall be allocated to qualified programs proposed by neighborhood
73 organizations not receiving allocations in the preceding year; however, if the amount of tax credits for
74 qualified programs requested by such neighborhood organizations is less than 10 percent of the
75 available amount of tax credits, the unallocated portion of such 10 percent of the available amount of
76 tax credits shall be allocated to qualified programs proposed by other neighborhood organizations.

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

82 D. Any school for students with disabilities may submit an application to the Superintendent of
83 Public Instruction requesting grants from the Schools for Students with Disabilities Fund (the Fund)
84 established under § 58.1-439.25. The Department of Education shall administer the Fund. The Fund
85 shall be capitalized in part through monetary donations for which the taxpayer shall be eligible for a
86 tax credit under this article as provided in §§ 58.1-439.21 and 58.1-439.24.

87 The application shall set forth a general description of the students served by the school and their
88 disabilities, the courses of instruction offered by the school, the proposed use of any grant moneys
89 received from the Fund, the expected time frame by which grant moneys are to be used, an estimate of
90 the number of students who will benefit from a grant award, and any other information requested by the
91 Department of Education that is reasonably needed for purposes of evaluating the application. The
92 Department of Education shall use the application and such information for purposes of determining
93 whether or not to award a grant to the applicant. The Department of Education shall establish an
94 application process and related procedures for schools for students with disabilities seeking grants from
95 the Fund. The Board of Education is authorized to adopt regulations in regard to such applications.
96 Actions of the Department of Education relating to the review of applications and awarding of grants
97 shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.). Decisions of
98 the Department of Education shall be final and not subject to review or appeal.

99 E. The total amount of tax credits granted for programs approved under this article, including
100 credits allocated for monetary donations to the Fund, for each fiscal year shall not exceed \$12 million;
101 however, \$3,750,000 shall be allocated to education programs conducted by neighborhood organizations
102 and \$3 million shall be allocated for monetary donations to the Schools for Students with Disabilities
103 Fund established under § 58.1-439.25. Such allocation of tax credits to education programs conducted
104 by neighborhood organizations shall constitute the minimum amount of tax credits to be allocated to
105 such programs. However, if the amount of tax credits requested by neighborhood organizations for
106 qualified education programs is less than \$3,750,000, the balance of such amount shall be allocated to
107 other types of qualified programs. Tax credits shall not be authorized after fiscal year 2009.

108 § 58.1-439.21. *Tax credit; amount; limitation; carry over.*

109 A. The Commissioner of the State Department of Social Services and the Superintendent of Public
110 Instruction shall certify to the Department of Taxation, or in the case of business firms subject to a tax
111 under Article 1 (§ 58.1-2500 et seq.) of Chapter 25 or Article 2 (§ 58.1-2620 et seq.) of Chapter 26 of
112 this title, to the State Corporation Commission, the applicability of the tax credit provided herein for a
113 business firm.

114 B. A business firm shall be eligible for a credit against the taxes imposed by Articles 2 (§ 58.1-320
115 et seq.) and 10 (§ 58.1-400 et seq.) of Chapter 3, Chapter 12 (§ 58.1-1200 et seq.), Article 1
116 (§ 58.1-2500 et seq.) of Chapter 25, or Article 2 (§ 58.1-2620 et seq.) of Chapter 26 of this title, in an
117 amount equal to 40 percent of the value of (i) monetary contributions to the Schools for Students with
118 Disabilities Fund (the Fund) subject to the annual aggregate \$3 million limitation for tax credits for
119 monetary donations to the Fund as described in subsection D or (ii) the money, property, professional
120 services, and contracting services donated by the business firm during its taxable year to neighborhood

organizations for programs approved pursuant to § 58.1-439.20. No tax credit of less than \$400 shall be granted for any donation, and a business firm shall not be allowed a tax credit in excess of \$175,000 per taxable year under this article. No tax credit shall be granted to any business firm for donations to a neighborhood organization providing job training or education for individuals employed by the business firm. Any tax credit not usable for the taxable year the donation was made may be carried over to the extent usable for the next five succeeding taxable years or until the full credit has been utilized, whichever is sooner. Credits granted to a partnership, electing small business (Subchapter S) corporation, or limited liability company shall be allocated to their individual partners, shareholders, or members, respectively, in proportion to their ownership or interest in such business entities.

C. A tax credit shall be issued by the Commissioner of the State Department of Social Services to a business firm upon receipt of a certification made by a neighborhood organization to whom tax credits were allocated for an approved program pursuant to § 58.1-439.20. The certification shall identify the type and value of the donation received and the business firm making the donation. A business firm shall be eligible for a tax credit under this section only to the extent that sufficient tax credits allocated to the neighborhood organization for an approved project are available.

D. No more than an aggregate of \$3 million in tax credits shall be allocated in any fiscal year by the Department of Education for monetary donations to the Fund from business firms and individuals as defined under this article. Subject to such limitation, the Department of Education shall issue a certificate to eligible business firms making a monetary donation to the Fund. The certificate shall identify the business firm and the amount of the monetary donation. The business firm shall attach the certificate to the Virginia tax return on which the credit is claimed. The Board of Education shall adopt regulations for the equitable allocation of the annual limitation of \$3 million in tax credits.

§ 58.1-439.22. Donations of professional services.

A. A sole proprietor, partnership or limited liability company engaged in the business of providing professional services shall be eligible for a tax credit under this article based on the time spent by the proprietor or a partner or member, respectively, who renders professional services to a program which has received an allocation of tax credits from the Commissioner of the State Department of Social Services. The value of the professional services, for purposes of determining the amount of the tax credit allowable, rendered by the proprietor or a partner or member to an approved program shall not exceed the lesser of (i) the reasonable cost for similar services from other providers or (ii) \$125 per hour.

B. A business firm shall be eligible for a tax credit under this article for the time spent by a salaried employee who renders professional services to an approved program. The value of the professional services, for purposes of determining the amount of tax credit allowed to a business firm for time spent by its salaried employee in rendering professional services to an approved project, shall be equal to the salary that such employee was actually paid for the period of time that such employee rendered professional services to the approved program.

C. Notwithstanding any provision of this article limiting eligibility for tax credits to business firms, physicians, chiropractors, dentists, nurses, nurse practitioners, physician assistants, optometrists, dental hygienists, professional counselors, clinical social workers, clinical psychologists, marriage and family therapists, physical therapists, and pharmacists licensed pursuant to Title 54.1 who provide health care services within the scope of their licensure, without charge, to patients of a clinic operated by an organization that has received an allocation of tax credits from the Commissioner of the State Department of Social Services and such clinic is organized in whole or in part for the delivery of health care services without charge, or to a clinic operated not for profit providing health care services for charges not exceeding those set forth in a scale prescribed by the State Board of Health pursuant to § 32.1-11 for charges to be paid by persons based upon ability to pay, shall be eligible for a tax credit pursuant to § 58.1-439.21 based on the time spent in providing health care services to patients of such clinic, regardless of where the services are delivered. The value of such services, for purposes of determining the amount of the tax credit allowable, rendered by the physician, chiropractor, dentist, nurse, nurse practitioner, physician assistant, optometrist, dental hygienist, professional counselor, clinical social worker, clinical psychologist, marriage and family therapist, physical therapist, or pharmacist, shall not exceed the lesser of (i) the reasonable cost for similar services from other providers or (ii) \$125 per hour.

§ 58.1-439.23. Donations of contracting services.

A. A sole proprietor, partnership or limited liability company engaged in the business of providing contracting services shall be eligible for a tax credit under this article based on the time spent by the proprietor or a partner or member, respectively, who renders contracting services to a program which has received an allocation of tax credits from the Commissioner of the State Department of Social Services. The value of the contracting services, for purposes of determining the amount of the tax credit allowable, rendered by the proprietor or a partner or member to an approved program shall not exceed the lesser of (i) the reasonable cost for similar services from other providers or (ii) \$50 per hour.

182 B. A business firm shall be eligible for a tax credit under this article for the time spent by a salaried
183 employee who renders contracting services to an approved program. The value of the contracting
184 services, for purposes of determining the amount of tax credit allowed to a business firm for time spent
185 by its salaried employee in rendering contracting services to an approved project, shall be equal to the
186 salary that such employee was actually paid for the period of time that such employee rendered
187 contracting services to the approved program.

188 § 58.1-439.24. Donations by individuals.

189 For purposes of this section, the term "individual" means the same as that term is defined in
190 § 58.1-302, but excluding any individual included in the definition of a "business firm" as such term is
191 defined in § 58.1-439.18.

192 A. Notwithstanding any provision of this article limiting eligibility for tax credits, an individual
193 making a monetary donation or a donation of marketable securities to a neighborhood organization
194 approved under this article or making a monetary donation to the Schools for Students with Disabilities
195 Fund (the Fund) shall be eligible for a credit against taxes imposed by § 58.1-320 as provided in this
196 section.

197 B. Notwithstanding any provision of this article specifying the amount of a tax credit, a tax credit
198 issued to an individual making a monetary donation or a donation of marketable securities to an
199 approved project or making a monetary donation to the Fund shall be equal to 40 percent of the value
200 of such donation; however, tax credits shall not be issued for any donation to an approved project or to
201 the Fund worth less than \$500 in a taxable year and no more than \$50,000 in tax credit shall be issued
202 to an individual or to married persons in a taxable year. Notwithstanding any other provision in this
203 article, such \$50,000 limitation shall not apply in any taxable year beginning in the relevant fiscal year
204 of the Commonwealth if, after an equitable allocation of tax credits under this article to neighborhood
205 organizations and for monetary donations to the Fund for such relevant fiscal year, the total amount of
206 tax credits granted for programs approved under this article and for monetary donations to the Fund
207 for such fiscal year was less than \$12 million.

208 C. An individual shall be eligible for a tax credit under this section only to the extent that sufficient
209 tax credits allocated to the neighborhood organization approved under this article are available. In
210 addition, the allowance of tax credits for monetary donations to the Fund shall be subject to the annual
211 aggregate \$3 million limitation for tax credits for such donations as described in subsection F.

212 D. The amount of credit allowed pursuant to this section, if such credit has been issued by the State
213 Department of Social Services, or allocated by the Department of Education, shall not exceed the tax
214 imposed pursuant to § 58.1-320 for such taxable year. Any credit not usable for the taxable year may be
215 carried over for credit against the individual's income taxes until the earlier of (i) the full amount of the
216 credit is used or (ii) the expiration of the fifth taxable year after the taxable year in which the tax credit
217 has been issued to such individual. If an individual that is subject to the tax limitation imposed pursuant
218 to this subsection is allowed another credit pursuant to any other section of the Code of Virginia, or
219 has a credit carryover from a preceding taxable year, such individual shall be considered to have first
220 utilized any credit allowed that does not have a carryover provision, and then any credit that is carried
221 forward from a preceding taxable year, prior to the utilization of any credit allowed pursuant to this
222 section.

223 E. A tax credit shall be issued by the Commissioner of the State Department of Social Services to an
224 individual only upon receipt of a certification made by a neighborhood organization to whom tax credits
225 were allocated for an approved program pursuant to § 58.1-439.20. The certification shall identify the
226 amount of the donation received and the individual making the donation.

227 F. No more than an aggregate of \$3 million in tax credits shall be allocated in any fiscal year for
228 monetary donations to the Fund from individuals and business firms as defined under this article.
229 Subject to such limitation, the Department of Education shall issue a certificate to eligible individuals
230 making a monetary donation to the Fund. The certificate shall identify the individual and the amount of
231 the monetary donation. The individual shall attach the certificate to the Virginia individual income tax
232 return when claiming the tax credit. The Board of Education shall adopt regulations to establish
233 procedures for the equitable allocation of the annual limitation of \$3 million in tax credits.

234 § 58.1-439.25. Schools for Students with Disabilities Fund established.

235 There is hereby created in the state treasury a special nonreverting fund to be known as the Schools
236 for Students with Disabilities Fund, hereafter referred to as "the Fund." The Fund shall be established
237 on the books of the Comptroller. All donations, grants, bequests, gifts, and other funds that may be
238 received, and such sums as may be appropriated by the General Assembly, shall be paid into the state
239 treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and
240 be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each
241 fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall
242 be used solely for the purpose of providing grants to licensed schools for students with disabilities.
243 Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued

by the Comptroller upon written request signed by the Superintendent of Public Instruction.

As provided under subsection D of § 58.1-439.20, the Department of Education shall provide grants from the Fund for schools for students with disabilities. Total grants awarded shall not exceed the dollar amount contained in the Fund. If moneys in the Fund are committed for years beyond the fiscal years covered under the existing appropriation act, the State Treasurer shall set aside and reserve such funds as have been committed, and such funds shall remain in the Fund for those future fiscal years. No grant shall be payable in the years beyond the existing appropriation act unless such funds are currently available in the Fund.

Persons and entities making a monetary donation to the Fund shall be eligible for tax credits as provided in §§ 58.1-439.21 and 58.1-439.24. The Department of Education shall allocate tax credits among such donors in accordance with the provisions of such sections. In no case, however, shall the Department of Education allocate more than a total of \$3 million in tax credits in any fiscal year for such monetary donations. The Department of Education shall issue a certificate identifying the donor and the amount of the monetary donation made to the Fund for such persons' or entities' allocated tax credits.

The Board of Education is authorized to adopt regulations for the implementation of the grant program described in this article. The regulations adopted by the Board shall provide for the equitable allocation of available moneys in the Fund among the approved applications submitted by schools for students with disabilities. The regulations also shall provide procedures for the allocation of the annual limitation of \$3 million in tax credits among persons or entities making monetary donations to the Fund for fiscal years in which such donations would otherwise result in more than an aggregate total of \$3 million in tax credits under §§ 58.1-439.21 and 58.1-439.24.

2. That any business firm that has pledged in writing on or before January 1, 2007, to a neighborhood organization to make a donation to such organization shall be eligible to receive a tax credit equal to 45 percent of the value of any qualifying donation that is covered under such writing, provided that the donation is made on or before January 1, 2013. Nothing in this enactment shall be interpreted or construed as affecting any other provision of the Neighborhood Assistance Act Tax Credit (§ 58.1-439.18 et seq. of the Code of Virginia). For purposes of this enactment, the terms "business firm" and "neighborhood organization" shall mean the same as those terms are defined in § 58.1-439.18.

3. That the provisions of this act shall in no way affect any tax credit issued under the Neighborhood Assistance Act (§ 63.2-2000 et seq. of the Code of Virginia) by the Commissioner of the State Department of Social Services.

4. That Chapter 20 (§§ 63.2-2000 through 63.2-2006) of Title 63.2 of the Code of Virginia is repealed.