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HOUSE BILL NO. 2314

Offered January 12, 2011

Prefiled January 12, 2011

A BILL to amend the Code of Virginia by adding in Chapter 3 of Title 58.1 an article numbered 13.3, consisting of sections numbered 58.1-439.25 through 58.1-439.28, relating to the Education Investment tax credit.

Patrons—Massie, Greason, Howell, A.T., Abbitt, Albo, Anderson, Athey, Bell, Richard P., Bell, Robert B., Byron, Cleaveland, Cline, Cole, Comstock, Cosgrove, Cox, J.A., Cox, M.K., Garrett, Gilbert, Habeeb, Iaquinto, Ingram, Janis, Joannou, Landes, Lingamfelter, Loupassi, Marshall, D.W., Marshall, R.G., May, Merricks, O'Bannon, Oder, Peace, Pogge, Poindexter, Purkey, Robinson, Stolle, Villanueva and Wilt; Senator: Obenshain

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 13.3, consisting of sections numbered 58.1-439.25 through 58.1-439.28, as follows:

*Article 13.3.**Education Investment Tax Credit.**§ 58.1-439.25. Definitions.*

As used in this article, unless the context requires a different meaning:

"Business entity" means a business that is subject to the taxes imposed by Article 10 (§ 58.1-400 et seq.) of Chapter 3.

"Federal Free and Reduced Lunch Program" means the federal program established under 42 U.S.C. § 1751.

"Monetary contribution" means contributions of cash, a financial asset as defined in § 8.8A-102 of Title 8.8A, tangible personal property and real property that is convertible into cash with a value that can be determined. For purposes of determining the value of real property, the Uniform Standards of Personal Appraisal Practice (USPAP) shall be utilized.

"Qualified educational expenses" means school-related tuition and instructional fees and materials, including textbooks, workbooks, and supplies used solely for school-related work.

"Scholarship foundation" means a nonstock, nonprofit corporation that is (i) exempt from taxation under § 501(c)(3) of the Internal Revenue Code of 1986, as amended, (ii) approved by the Department of Taxation in accordance with the provisions of § 58.1-439.27, and (iii) established to provide financial aid for the education of students residing in the Commonwealth.

"Student" means a child who is a resident of Virginia and (i) enrolled in the Commonwealth's public schools for the year prior to receiving a scholarship foundation scholarship, (ii) is a prior recipient of a scholarship foundation scholarship, (iii) is eligible to enter kindergarten or first grade, or (iv) was not a resident of Virginia during the preceding school year.

§ 58.1-439.26. Tax credit for donations to scholarship foundations by business entities.

A. 1. For taxable years beginning on and after January 1, 2012, a business entity may receive a credit against any tax due under Article 10 (§ 58.1-400 et seq.) of Chapter 3, in an amount equal to 70 percent of its monetary contribution to a scholarship foundation included on the list published annually by the Department in accordance with the provisions of § 58.1-439.27, except that no business entity shall receive any credit against any bank franchise tax imposed by a city, town, or county under the authority granted in § 58.1-1208, 58.1-1209 or 58.1-1210. The credit shall be allowed to be claimed for the taxable year following the year of such contribution.

B. Tax credits shall be awarded to business entities by the Department of Taxation on a first-come, first-served basis in accordance with procedures established by the Department under the following conditions:

1. The total amount of tax credits that may be granted each fiscal year under this section shall not exceed \$25 million.

2. Any tax credit that is not used by a business entity in the taxable year following the year in which the contribution is made may be carried forward or carried back for up to 15 years and may be transferable.

3. Every business entity seeking the credit allowed under this section shall submit with the income tax return verification from each scholarship foundation to which monetary donations have been made by the business entity during the taxable year.

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55 4. A business entity shall not be allowed a tax credit pursuant to this section for any monetary
56 contribution for which the business entity is allowed a federal income tax deduction as a charitable
57 contribution pursuant to § 170 of the Internal Revenue Code, as amended.

58 C. In a form approved by the Department, the business entity or scholarship foundations on behalf of
59 a business entity shall request and receive preauthorization for a specified tax credit amount from the
60 Department. The Department's preauthorization notice shall accompany the monetary contribution from
61 the business entity to the scholarship foundation, which shall, within 20 days, return the notice to the
62 Department certifying the amount of the monetary contribution and date received. Preauthorization
63 notices not acted upon by the business entity within 60 days of issuance shall be void. No tax credit
64 shall be approved by the Department for activities that are a part of a business entity's normal course
65 of business.

66 § 58.1-439.27. Scholarship foundation eligibility and requirements; list of foundations receiving
67 contributions.

68 A. Scholarship foundations seeking to receive and administer tax-credit-approved funds shall submit
69 information to the Department, which shall determine whether an applicant is a scholarship foundation
70 as defined in § 58.1-439.25. The Department shall prescribe through regulations what reasonable
71 information shall be submitted by such foundations. Notice of approval or denial, including reasons for
72 denial, shall be issued by the Department to the applicant within 60 days after the information is
73 submitted. Any approval shall not be withheld unreasonably.

74 B. The Department shall submit a list of all scholarship foundations receiving contributions from
75 business entities to the Chairmen of the House and Senate Finance Committees no later than December
76 1 of each year.

77 § 58.1-439.28. Guidelines for scholarship foundations.

78 A. A scholarship foundation, as defined in § 58.1-439.25 and included on the list published annually
79 by the Department in accordance with the provisions of § 58.1-439.27, shall disburse annually at least
80 90 percent of its tax-credit-derived funds for qualified educational expenses through scholarships to
81 eligible students.

82 B. In awarding scholarships, the scholarship foundation shall (i) provide them to any student whose
83 family's annual household income is equal to or less than the amount required to qualify for the federal
84 Free and Reduced Lunch Program, (ii) not limit scholarships to students of one school, and (iii) comply
85 with Title VI of the Civil Rights Act of 1964, as amended. Payment of the scholarship by the eligible
86 scholarship foundation shall be by individual warrant or check made payable to and mailed to the
87 eligible school that the student's parent or legal guardian indicates.

88 C. Scholarship foundations shall ensure that eligible schools selected by scholarship students (i) are
89 in compliance with the Commonwealth's and locality's health and safety laws and codes; (ii) hold a
90 valid occupancy permit as required by the locality; (iii) comply with Title VI of the Civil Rights Act of
91 1964, as amended; and (iv) comply with nonpublic school accreditation requirements as set forth in
92 § 22.1-19 and administered by the Virginia Council for Private Education or maintain an assessment
93 system that annually measures scholarship students' progress in reading and math using a national
94 norm-referenced achievement test, including but not limited to the Stanford Achievement Test, California
95 Achievement Test, and Iowa Test of Basic Skills.

96 D. The amount of a scholarship provided to any student for any single school year by all eligible
97 scholarship foundations from eligible contributions shall not exceed the lesser of (i) the actual qualified
98 educational expenses or (ii) 100 percent of the per-pupil amount distributed to each local school
99 division as the state's share of the standards of quality costs using the composite index of ability to pay
100 as defined in the general appropriation act.

101 E. Scholarship foundations shall develop procedures for disbursing scholarships in periodic payments
102 throughout the school year to ensure scholarships are portable.

103 F. An audit of the scholarship foundation's tax-credit-derived funds, which complies with generally
104 accepted accounting principles and is conducted by a certified public accountant, shall be conducted
105 annually and a summary report made available to the public upon request. The report shall include (i)
106 the total number and dollar amount of contributions received during the previous calendar year, (ii) the
107 total number and dollar amount of qualified educational expenses scholarships awarded during the
108 previous calendar year to every student whose family's annual household income was equal to or less
109 than the amount required to qualify for the federal Free and Reduced Lunch Program, and (iii) the
110 percentage of first-time recipients of qualified educational expenses scholarships.

111 G. The Department shall publish annually on its website a list of each scholarship organization
112 qualified under this section. Once an organization has been qualified by the Department, it shall remain
113 qualified until the Department removes the organization from its annual list. The Department shall
114 remove an organization from the annual list if it no longer meets the requirements of this section. The
115 Department may periodically require a qualified organization to submit updated or additional
116 information for purposes of determining whether or not the organization continues to meet the

117 *requirements of this section.*
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