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SENATE BILL NO. 1168

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Finance
on February 13, 2017)

(Patron Prior to Substitute—Senator DeSteph)

A BILL to amend and reenact § 58.1-439.20 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 58.1-439.20:1 and 58.1-439.20:2, relating to the Neighborhood Assistance Act Tax Credit program.

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-439.20 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding sections numbered 58.1-439.20:1 and 58.1-439.20:2 as follows:

§ 58.1-439.20. Proposals to the State Board of Social Services; regulations; tax credits authorized.

A. Any neighborhood organization may submit a proposal, other than education proposals which shall be applied for and allocated pursuant to the provisions of § 58.1-439.20:1, to the Commissioner of Social Services requesting an allocation of tax credits for use by business firms making donations to the neighborhood organization. Neighborhood organizations 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.

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 State Board of Social Services and the Department of Education are is hereby authorized to adopt regulations (or, alternatively, guidelines in the case of the Department of Education) for the approval or disapproval of such proposals by neighborhood organizations and for determining the value of the donations. Such regulations or guidelines shall contain a requirement that

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. Also, such regulations or guidelines shall contain a requirement that as As a prerequisite for approval, neighborhood organizations with total revenues (including the value of all donations) (i) in excess of \$100,000 for the organization's most recent year ended shall provide to the State Board Commissioner of Social Services or the Department of Education, as applicable, an audit or review for such year performed by an independent certified public accountant or (ii) of \$100,000 or less for the organization's most recent year ended shall provide to the State Board Commissioner of Social Services or the Department of Education, as applicable, a compilation for such year performed by an independent certified public accountant. 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 State Board Commissioner of Social Services or the Department of Education, as applicable, within the 30-day period immediately following such deadline.

Such regulations or guidelines by the Department of Education shall provide that 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 that 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. Such regulations by the State Board of Social Services shall provide that at least 50 percent of the persons served by the neighborhood organization be low-income persons as defined in § 58.1-439.18.

4. In order for a proposal to be approved, the an applicant neighborhood organization and any of its affiliates shall meet the requirements of this section and the application regulations or guidelines.

2. The requirements for proposals submitted to the Superintendent of Public Instruction that (i) at least 50 percent of the persons served by the neighborhood organization and each of its affiliates be low-income persons or eligible students with disabilities and (ii) at least 50 percent of the revenues of the neighborhood organization and each of its affiliates be used to provide services to such persons shall not apply to any neighborhood organization for tax credit allocations beginning for fiscal year 2014-2015 and ending with tax credit allocations for fiscal year 2019-2020, provided that (a) the neighborhood organization received an allocation of tax credits for fiscal year 2011-2012 allocations; (b) at least 50 percent of the persons served by the neighborhood organization are low-income persons or eligible students with disabilities; (c) at least 50 percent of the neighborhood organization's revenues are used to provide services to such persons; and (d) none of the affiliates of the neighborhood organization

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receives an allocation of tax credits for the program year of such five-year period.

3. ~~Beginning~~ *However, beginning* with tax credit allocations for fiscal year 2016-2017 and thereafter, ~~the requirements such requirement~~ for a proposal submitted by a neighborhood organization to the Commissioner of Social Services that (i) at least 50 percent of the persons served by each affiliate of the neighborhood organization be low-income persons; (ii) at least 50 percent of the revenues of each affiliate of the neighborhood organization be used to provide services to such persons; (iii) each affiliate also meet the definition of "neighborhood organization" under § 58.1-439.18, and (iv) an audit, review, or compilation for each affiliate be furnished to the Commissioner of Social Services shall not apply in determining the eligibility of the neighborhood organization submitting a proposal, provided that (a) (i) the neighborhood organization otherwise meets all statutory requirements and regulations, ~~(b) (ii) the~~ neighborhood organization received a fiscal year 2013-2014 allocation of neighborhood assistance tax credits, and ~~(c) (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.

4. 5. The regulations ~~or guidelines~~ shall provide for the equitable allocation of the available amount of tax credits among the approved proposals submitted by neighborhood organizations. ~~The regulations or guidelines shall also provide that at least 10 percent of~~ *In any year in which* the available amount of tax credits ~~each year 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 ~~not receiving that did not receive any allocations in the preceding year; however, if~~. *If* the amount of tax credits for qualified programs requested by such neighborhood organizations is less than 10 percent of the available excess amount of tax credits, the unallocated portion of such 10 percent of the available amount of tax credits shall be allocated to qualified programs proposed by other neighborhood organizations.

C. 1. If the Commissioner of Social Services ~~or 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 making donations to the approved program. A neighborhood organization shall not assign or transfer an allocation of tax credits to another neighborhood organization without the approval of the Commissioner of Social Services ~~or the Superintendent of Public Instruction~~, as applicable.

2. Notwithstanding any other provision of law, (i) no more than an aggregate of \$0.825 million in tax credits shall be approved in a fiscal year to a neighborhood organization ~~or to a grouping of neighborhood organization affiliates for all education proposals~~; and (ii) no more than an aggregate of \$0.5 million in tax credits shall be approved in a fiscal year to a neighborhood organization or to a grouping of neighborhood organization affiliates for all other proposals combined. ~~However, if~~

3. *If, after the initial allocation of credits to approved proposals*, the State Department of Social Services ~~or the Department of Education~~ after the initial allocation of tax credits to approved proposals has a balance of tax credits remaining for the fiscal year that can be used or allocated by a neighborhood organization for a proposal that had been approved for tax credits during the initial allocation ~~by the State Department of Social Services or the Department of Education~~, then (a) the Commissioner of Social Services ~~or the Superintendent of Public Instruction~~, as applicable, shall reallocate the remaining balance of tax credits to such previously approved proposals to the extent that a neighborhood organization can use or allocate additional tax credits for the previously approved proposal ~~and (b) the \$0.825 and~~. *The* \$0.5 million annual limitations for tax credits approved to a grouping of neighborhood organization affiliates shall be inapplicable ~~to the extent for such reallocation~~ of any balance of tax credits ~~reallocated under clause (a)~~. The balance of tax credits remaining for reallocation shall include the amount of any tax credits that have been granted for a proposal approved during the initial allocation but for which the Commissioner of Social Services ~~or the Superintendent of Public Instruction~~ has been ~~provided~~ *received* notice ~~by from~~ the neighborhood organization that it will not be able to use or allocate such amount for the approved proposal.

D. The total amount of tax credits granted for programs approved ~~by the Commissioner of Social Services~~ under this article for each fiscal year shall not exceed the following: for education proposals for approval by the Superintendent of Public Instruction, \$8 million for fiscal year 2013-2014, \$8.5 million for fiscal year 2014-2015, and \$9 million for fiscal year 2015-2016 and each fiscal year thereafter; and for all other proposals for approval by the Commissioner of Social Services, \$7 million for fiscal year 2013-2014, \$7.5 million for fiscal year 2014-2015, and \$8 million for fiscal year 2015-2016 and each fiscal year thereafter.

The Superintendent of Public Instruction and the Commissioner of Social Services shall work cooperatively ~~with the Superintendent of Public Instruction~~ for purposes of ensuring that neighborhood organization proposals are submitted to the proper state agency *pursuant to this section and* § 58.1-439.20:1. The Superintendent of Public Instruction and the Commissioner of Social Services may request the assistance of the Department of Taxation for purposes of determining whether or not anticipated donations for which tax credits are requested by a neighborhood organization likely qualify

as a charitable donation under federal tax laws and regulations.

E. Actions of ~~(i) the State Department of Social Services, or the Commissioner of the same, or (ii) the Superintendent of Public Instruction or the Department of Education~~ relating to the review of neighborhood organization proposals and the allocation of tax credits to proposals shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.). Decisions of ~~(a) the State Department of Social Services, or the Commissioner of the same, or (b) the Superintendent of Public Instruction or the Department of Education~~ shall be final and not subject to review or appeal.

F. Notwithstanding the provisions of ~~§ 30-19.1-11~~, the issuance of tax credits under this article shall expire on July 1, 2028.

§ 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 (including the value of all donations) (i) in excess of \$100,000 for the organization's most recent year ended shall provide to the Department of Education an audit or review for such year performed by an independent certified public accountant or (ii) of \$100,000 or less for the organization's most recent year ended shall provide to the Department of Education a compilation for such year performed by an independent certified public accountant. 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.

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

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

3. If, after the initial allocation of credits to approved proposals, the Department of Education has a

183 balance of tax credits remaining for the fiscal year that can be used or allocated by a neighborhood
184 organization for a proposal that had been approved for tax credits during the initial allocation, then the
185 Superintendent of Public Instruction shall reallocate the remaining balance of tax credits to such
186 previously approved proposals to the extent that a neighborhood organization can use or allocate
187 additional tax credits for the previously approved proposal. The \$0.825 million annual limitations for
188 tax credits approved to a grouping of neighborhood organization affiliates shall be inapplicable for such
189 reallocation of any balance of tax credits. The balance of tax credits remaining for reallocation shall
190 include the amount of any tax credits that have been granted for a proposal approved during the initial
191 allocation but for which the Superintendent of Public Instruction received notice from the neighborhood
192 organization that it will not be able to use or allocate such amount for the approved proposal.

193 D. The total amount of tax credits granted for programs approved by the Superintendent of Public
194 Instruction under this article for each fiscal year shall not exceed \$8 million for fiscal year 2013-2014,
195 \$8.5 million for fiscal year 2014-2015, and \$9 million for fiscal year 2015-2016 and each fiscal year
196 thereafter.

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

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

208 **§ 58.1-439.20:2. Expiration.**

209 Notwithstanding the provisions of § 30-19.1:11, the issuance of tax credits under this article shall
210 expire on July 1, 2028.