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## SENATE BILL NO. 1168

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Joint Conference Committee  
on February 23, 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) of (i) in excess of more than \$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 the most recent 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 the most recent year performed by an independent certified public accountant. Such audit, review, or compilation shall be performed by an independent certified public accountant. For purposes of this subdivision, "total revenues" means all revenues, including the value of all donations, for the organization's most recent year. 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

60 eligible students with disabilities, (c) at least 50 percent of the neighborhood organization's revenues are  
61 used to provide services to such persons, and (d) none of the affiliates of the neighborhood organization  
62 receives an allocation of tax credits for the program year of such five-year period.

63 3. *Beginning However, beginning* with tax credit allocations for fiscal year 2016-2017 and thereafter,  
64 the requirements *such requirement* for a proposal submitted by a neighborhood organization to the  
65 Commissioner of Social Services that (i) at least 50 percent of the persons served by each affiliate of  
66 the neighborhood organization be low-income persons, (ii) at least 50 percent of the revenues of each  
67 affiliate of the neighborhood organization be used to provide services to such persons, (iii) each affiliate  
68 also meet the definition of "neighborhood organization" under ~~§ 58.1-439.18~~, and (iv) an audit, review,  
69 or compilation for each affiliate be furnished to the Commissioner of Social Services shall not apply in  
70 determining the eligibility of the neighborhood organization submitting a proposal, provided that (a) (i)  
71 the neighborhood organization otherwise meets all statutory requirements and regulations, ~~(b) (ii)~~ the  
72 neighborhood organization received a fiscal year 2013-2014 allocation of neighborhood assistance tax  
73 credits, and ~~(c) (iii)~~ no affiliate of the neighborhood organization submits a proposal for or receives an  
74 allocation of tax credits pursuant to this article for the program year for which the neighborhood  
75 organization has submitted its proposal.

76 4. 5. The regulations ~~or guidelines~~ shall provide for the equitable allocation of the available amount  
77 of tax credits among the approved proposals submitted by neighborhood organizations. ~~The regulations~~  
78 ~~or guidelines shall also provide that at least 10 percent of~~ *In any year in which* the available amount of  
79 tax credits ~~each year exceeds the previous year's available amount, at least 10 percent of the excess~~  
80 ~~amount shall be allocated to qualified programs proposed by neighborhood organizations not receiving~~  
81 ~~that did not receive any allocations in the preceding year; however, if. If~~ the amount of tax credits ~~for~~  
82 ~~qualified programs~~ requested by such neighborhood organizations is less than 10 percent of the available  
83 excess amount of tax credits, the unallocated portion of such 10 percent of the available amount of tax  
84 credits shall be allocated to qualified programs proposed by other neighborhood organizations.

85 C. 1. If the Commissioner of Social Services ~~or the Superintendent of Public Instruction~~ approves a  
86 proposal submitted by a neighborhood organization, the organization shall make the allocated tax credit  
87 amounts available to business firms making donations to the approved program. A neighborhood  
88 organization shall not assign or transfer an allocation of tax credits to another neighborhood organization  
89 without the approval of the Commissioner of Social Services ~~or the Superintendent of Public Instruction~~,  
90 as applicable.

91 2. Notwithstanding any other provision of law, ~~(i) no more than an aggregate of \$0.825 million in~~  
92 ~~tax credits shall be approved in a fiscal year to a neighborhood organization or to a grouping of~~  
93 ~~neighborhood organization affiliates for all education proposals, and (ii) no more than an aggregate of~~  
94 ~~\$0.5 million in tax credits shall be approved in a fiscal year to a neighborhood organization or to a~~  
95 ~~grouping of neighborhood organization affiliates for all other proposals combined. However, if~~

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

111 D. The total amount of tax credits granted for programs approved *by the Commissioner of Social*  
112 *Services* under this article for each fiscal year shall not exceed the following: for education proposals for  
113 approval by the Superintendent of Public Instruction, \$8 million for fiscal year 2013-2014, \$8.5 million  
114 for fiscal year 2014-2015, and \$9 million for fiscal year 2015-2016 and each fiscal year thereafter; and  
115 for all other proposals for approval by the Commissioner of Social Services, \$7 million for fiscal year  
116 2013-2014, \$7.5 million for fiscal year 2014-2015, and \$8 million for fiscal year 2015-2016 and each  
117 fiscal year thereafter.

118 The Superintendent of Public Instruction and the Commissioner of Social Services shall work  
119 cooperatively *with the Superintendent of Public Instruction* for purposes of ensuring that neighborhood  
120 organization proposals are submitted to the proper state agency *pursuant to this section and*  
121 ~~§ 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 of (i) more than \$100,000 shall provide to the Department of Education an audit or review for the most recent year or (ii) \$100,000 or less shall provide to the Department of Education a compilation for the most recent year. Such audit, review, or compilation shall be performed by an independent certified public accountant. For purposes of this subdivision, "total revenues" means all revenues, including the value of all donations, for the organization's most recent year. 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. Expenditures for teacher salaries shall count toward the requirement that at least 50 percent of revenues 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.

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

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

197 D. The total amount of tax credits granted for programs approved by the Superintendent of Public  
198 Instruction under this article for each fiscal year shall not exceed \$9 million for fiscal year 2015-2016  
199 and each fiscal year thereafter.

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

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

211 **§ 58.1-439.20:2. Expiration.**

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