

DEPARTMENT OF TAXATION

2017 Fiscal Impact Statement

1. **Patron** Bill R. DeSteph, Jr.

3. **Committee** Senate Finance

4. **Title** Income Tax; Aggregate Cap on Tax Credits
Related to Education

2. **Bill Number** SB 1167

House of Origin:

 X **Introduced**

 Substitute

 Engrossed

Second House:

 In Committee

 Substitute

 Enrolled

5. Summary/Purpose:

This bill would allocate 20 percent of any unissued credits in a fiscal year under the Education Improvement Scholarships Tax Credit program to the Neighborhood Assistance Act Tax Credit program during the next fiscal year to be allocated to education proposals.

This bill would be effective for Fiscal Year 2018 and each fiscal year thereafter.

6. Budget amendment necessary: No.

7. Fiscal Impact Estimates are: Not available. (See Line 8.)

8. Fiscal implications:

Administrative Costs

The Department of Taxation ("the Department") and the Department of Education ("DOE") consider implementation of this bill as routine, and do not require additional funding.

Revenue Impact

This bill would have an unknown negative General Fund revenue impact, beginning in Fiscal Year 2019. Under this bill, additional tax credits are expected to become available under the Neighborhood Assistance Act Tax Credit program for allocation beginning in Fiscal Year 2018. Such credits would be claimed by taxpayers on their Taxable Year 2018 income tax returns filed in Fiscal Year 2019.

During Fiscal Year 2016, DOE issued approximately \$6.8 million of Education Improvement Scholarships Tax Credits. Since the annual cap on this credit is \$25 million, there were \$18.2 million of tax credits that remained unissued. If 20 percent of this unissued credit amount was transferred to the Neighborhood Assistance Act Tax Credit program, an additional \$3.7 million in tax credits would have been transferred to the Neighborhood Assistance Act Tax Credit program. Because the Neighborhood

Assistance Act Tax Credit is currently oversubscribed by \$10.4 million for education proposals, all \$3.7 million in tax credits transferred to the Neighborhood Assistance Act Tax Credit program under this bill would likely be issued, resulting in a negative revenue impact of \$3.7 million.

The amount of tax credits issued to taxpayers under the Education Improvement Scholarships Tax Credits program has been increasing each fiscal year. As the amount of Education Improvement Scholarships Tax Credits issued increases, the amount of unissued Education Improvement Scholarships Tax Credits available for allocation to the Neighborhood Assistance Act Tax Credit program under this bill would decrease. Depending on the amount of Education Improvement Scholarships Tax Credits actually issued for Fiscal Year 2017 and thereafter, the actual impact could be slightly less.

9. Specific agency or political subdivisions affected:

Department of Taxation
Department of Education

10. Technical amendment necessary: No.

11. Other comments:

Virginia Neighborhood Assistance Act Tax Credit

The Virginia Neighborhood Assistance Act provides an income tax credit to business firms and individuals that donate to neighborhood organizations for approved programs that benefit impoverished people. Under this Act, a neighborhood organization is allocated funding through the Neighborhood Assistance Act Program. The Department of Social Services and the Department of Education are responsible for approving programs proposed by neighborhood organizations and allocating Neighborhood Assistance Act Tax Credits to neighborhood organizations with approved programs. A business firm or individual that makes a donation to a neighborhood organization for an approved program is then eligible to receive an income tax credit from that neighborhood organization.

The amount of the credit for a business firm or individual who donates professional services is equal to 65 percent of the value of the money, property, professional services, or contracting services donated by such taxpayer to a neighborhood organization for an approved program. No credit less than \$400 may be granted to a business firm or individual who provides professional services for any donation. Therefore, a business firm or individual who provides professional services must make a donation with a value of at least \$616 to meet the minimum credit threshold, and receive an allocation of credits.

The amount of the credit for an individual who makes a monetary donation or marketable securities donation to a neighborhood organization for an approved program is equal to 65 percent of the value of such donation. To receive an allocation of credits, an individual is required to make a donation of at least \$500. For purposes of determining the amount of credits allocated to an individual, the value of the individual's donation is limited to the lesser of the actual value of the donation or \$125,000. The \$125,000 cap on the value of donations caps the credit at \$81,250 per taxpayer.

To apply for an allocation of tax credits for an education proposal, a neighborhood organization must submit such proposal to DOE no later than the first business day of May prior to the beginning of each fiscal year. The neighborhood organization submitting a proposal, including all required information, and meeting the eligibility criteria is notified by the DOE of the approval or disapproval of such proposals by July 1 of the fiscal year.

DOE is required to reserve at least 10 percent of the available tax credits for neighborhood organizations that did not receive an allocation of tax credits in the preceding fiscal year. If the total amount of tax credits initially allocated to proposals submitted by new neighborhood organizations is less than 10 percent of the available tax credits, then the remaining amount of tax credits will be added to the available tax credits for returning neighborhood organizations.

If the total amount of initial allocations exceeds the available amount of tax credits for that program year, then the initial allocation for each approved proposal will be reduced in proportion to its percentage of the total amount of initial allocations the approved proposals were slated to receive. For example, if an initial allocation of an approved proposal is 10 percent of the total amount of initial allocations, then that proposal's initial allocation will be equal to 10 percent of the available amount of tax credits for that fiscal year. However, if the total amount of tax credits allocated to neighborhood organizations that did not receive an allocation of tax credits in the preceding fiscal year is 10 percent or less, then the initial allocation to these neighborhood organizations will not be reduced.

If, the total amount of initial allocations is less than the amount of available tax credits, or there are tax credits available after the 30-day appeal period for denied proposals, then such tax credits will be allocated on a pro rata basis among the neighborhood organizations that have used at least 75 percent of their initial allocation by November 1 of the fiscal year.

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 and individuals 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. Such action will be deemed program abuse and will be cause for termination of a neighborhood organization's eligibility to participate in the Neighborhood Assistance Act Tax Credit Program for Education.

Neighborhood organizations may release all or a portion of their unused tax credit allocation to be reallocated. During the fiscal year, neighborhood organizations that have used at least 75 percent of their initial allocation of tax credits will be eligible to receive a pro rata distribution of any additional tax credits that become available for reallocation. Upon notice from the Department, a neighborhood organization with an approved proposal may be eligible to receive an additional allocation of tax credits

The total amount of credits that may be allocated to such neighborhood organizations for each fiscal year is subject to an annual cap in the following amounts:

	Fiscal Year 2014	Fiscal Year 2015	Fiscal Year 2016 (and after)
Education Proposals	\$8 million	\$8.5 million	\$9 million
Other Proposals	\$7 million	\$7.5 million	\$8 million
TOTAL	\$15 million	\$16 million	\$17 million

The Neighborhood Assistance Act Tax Credit is currently oversubscribed. The chart below lists the amount of credits requested by neighborhood organizations wishing to obtain an allocation of credits and the annual credit cap for Fiscal Years 2014 through 2017:

	Education Proposals		Other Proposals	
Fiscal Year	Credits Requested	Annual Cap	Credits Requested	Annual Cap
2014	\$11.1 million	\$8.0 million	\$18.5 million	\$7.0 million
2015	\$17.8 million	\$8.5 million	\$22.2 million	\$7.5 million
2016	\$19.4 million	\$9 million	\$26.7 million	\$8 million
2017	\$18.1 million	\$9 million	\$27.2 million	\$8 million
Total	\$66.4 million	\$34.5 million	\$94.6 million	\$30.5 million

Education Improvement Scholarships Tax Credits

Taxpayers are allowed to claim Education Improvement Scholarships Tax Credits equal to 65 percent of the monetary or marketable securities donation they made to a qualifying scholarship foundation. Tax credits are awarded to taxpayers on a first-come, first-served basis. No tax credit is allowed if the donation is less than \$500. No more than \$125,000 in tax credits may be issued to an individual in a taxable year. The \$125,000 limitation does not apply to tax credits issued to any business entity, including a sole proprietorship.

A donor seeking to make a monetary or marketable securities donation to one or more eligible scholarship foundations, or one or more scholarship foundations on behalf of such donor, must request preauthorization for a specified tax credit amount from the Superintendent of Public Instruction.

DOE preauthorizes tax credits up to \$25 million for each fiscal year on a first-come, first-served basis. First-come, first-served is determined based on a date and time stamp of the preauthorization request. When the \$25 million fiscal year limit is reached, donors are notified that they have been placed on a waiting list. A donor that is approved for a preauthorized amount of tax credits will receive from the DOE, via U.S. Mail, a preauthorization notice. The preauthorization notice must accompany the preauthorized donation from the donor to the scholarship foundation.

Preauthorization notices not acted upon by the donor within 180 days of issuance are void. If a donor makes one or more partial payments on a preauthorization notice, the remaining amount becomes void 180 days after issuance. The voided amount is then available for approval of other preauthorization requests in the order in which they were received.

At the beginning of each new fiscal year, any preauthorized tax credits from the previous fiscal year that have not been acted upon but are still valid will be carried over to the new program year and deducted from the \$25 million program year tax credit limitation. If the preauthorized tax credits are not acted upon by the donor by making a donation and providing the required signed preauthorization notice to the scholarship foundation before the expiration of the 180 days, the unused preauthorized tax credits will be added back to the total amount of tax credits that may be allocated in a program year.

In awarding scholarships from tax-credit-derived funds, the scholarship foundation must provide scholarships for qualified educational expenses only to students whose family's annual household income is not in excess of 300 percent of the current poverty guidelines or eligible students with a disability, not limit scholarships to students of one school, and comply with federal law. Payment of scholarships from tax-credit-derived funds by the eligible scholarship foundation must be by individual warrant or check made payable to and mailed to the eligible school that the student's parent or legal guardian indicates. In mailing such scholarship payments, the eligible scholarship foundation must include a written notice to the eligible school that the source of the scholarship was donations made by persons receiving tax credits for the same pursuant to the Education Improvement Scholarships Tax Credit program.

As explained above, the total amount of Education Improvement Scholarships Tax Credit available in any given fiscal year is capped at \$25 million. This tax credit is currently undersubscribed. The chart below lists the amount of issued for Fiscal Years 2014 through 2017:

Fiscal Year	Credits Issued	Unissued Credit Amount
2014	\$1.5 million	\$23.5 million
2015	\$3.7 million	\$21.3 million
2016	\$6.8 million	\$18.2 million
2017 (preliminary)	\$5.5 million	\$19.5 million
Total	\$17.5 million	\$82.5 million

Proposed Legislation

This bill would allocate 20 percent of any unissued credits in a fiscal year under the Education Improvement Scholarships Tax Credit program to the Neighborhood Assistance Act Tax Credit program during the next fiscal year to be allocated to education proposals.

This bill would be effective for Fiscal Year 2018 and each fiscal year thereafter.

Similar Bills

House Bill 1433 would modify the Neighborhood Assistance Act Tax Credit by eliminating the requirement that 10 percent of all available tax credits each year must be set aside for neighborhood organizations that did not receive an allocation of tax credits in the previous year and replace it with a set aside provision that would apply only in years where the cap is increased.

Senate Bill 1109 would prohibit taxpayers from claiming both a state tax deduction and either the Neighborhood Assistance Act Tax Credit or the Education Improvement Scholarships Tax Credit for the same charitable donation.

House Bill 1838 would change the process of allocating Neighborhood Assistance Act Tax Credits to neighborhood organizations submitting education proposals by directing the Board of Education to develop regulations that would (1) allow credits to be prioritized for proposals benefiting underperforming school districts in the Commonwealth, (2) allow for the input of local leaders regarding the education needs of localities in which the proposed programs are located, and (3) require the inclusion of performance and accountability measures in the proposals.

Senate Bill 1137 would reduce the amount of the Neighborhood Assistance Act Tax Credit from 65 percent of the value of donations to neighborhood organizations for Taxable Years 2012 through 2017 to (i) 60 percent of such donations for Taxable Year 2018, (ii) 55 percent of such donations for Taxable Year 2019, and (iii) 50 percent of such donations for Taxable Year 2020 and thereafter.

Senate Bill 1165 would require that the Department of Education and Department of Social Services consider, in allocating Neighborhood Assistance Act Tax Credits, the past performance of neighborhood organizations that have received allocations of credits.

Senate Bill 1168 would reorganize the provisions of the Neighborhood Assistance Act Tax Credit program to set out separate sections for the portions of the program administered by the State Department of Social Services and the Department of Education.

cc : Secretary of Finance

Date: 1/22/2017 JJS
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