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SENATE BILL NO. 1160

Senate Amendments in [] - January 31, 2019

A BILL to amend and reenact §§ 58.1-439.20:1 and 58.1-439.25 through 58.1-439.28 of the Code of Virginia and to amend the Code of Virginia by adding in Article 13.3 of Chapter 3 of Title 58.1 sections numbered 58.1-439.29 and 58.1-439.30, relating to income tax credits related to education; neighborhood organizations.

Patron Prior to Engrossment—Senator Ruff

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-439.20:1 and 58.1-439.25 through 58.1-439.28 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 13.3 of Chapter 3 of Title 58.1 sections numbered 58.1-439.29 and 58.1-439.30 as follows:

§ 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 and individuals 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 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.

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 making such equitable allocation of credits, the Superintendent shall consider the portion of a neighborhood organization's total revenues that are used to serve low-income persons and eligible students with disabilities and shall not rely solely on the amount of credits allocated to the neighborhood organization in the prior year in allocating available credits. In any year in which the available amount of tax credits exceeds the

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59 previous year's available amount, at least 10 percent of the excess amount shall be allocated to qualified
60 programs proposed by neighborhood organizations that did not receive any allocations in the preceding
61 year. If the amount of tax credits requested by such neighborhood organizations is less than 10 percent
62 of the excess amount, the unallocated portion of such 10 percent shall be allocated to qualified programs
63 proposed by other neighborhood organizations.

64 C. 1. If the Superintendent of Public Instruction approves a proposal submitted by a neighborhood
65 organization, the organization shall make the allocated tax credit amounts available to business firms *and*
66 *individuals* making donations to the approved program. A neighborhood organization shall not assign or
67 transfer an allocation of tax credits to another neighborhood organization without the approval of the
68 Superintendent of Public Instruction.

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

72 3. If, after the initial allocation of credits to approved proposals, the Department of Education has a
73 balance of tax credits remaining for the fiscal year that can be used or allocated by a neighborhood
74 organization for a proposal that had been approved for tax credits during the initial allocation, then the
75 Superintendent of Public Instruction shall reallocate the remaining balance of tax credits to such
76 previously approved proposals to the extent that a neighborhood organization can use or allocate
77 additional tax credits for the previously approved proposal. The \$0.825 million annual limitations for tax
78 credits approved to a grouping of neighborhood organization affiliates shall be inapplicable for such
79 reallocation of any balance of tax credits. The balance of tax credits remaining for reallocation shall
80 include the amount of any tax credits that have been granted for a proposal approved during the initial
81 allocation but for which the Superintendent of Public Instruction received notice from the neighborhood
82 organization that it will not be able to use or allocate such amount for the approved proposal.

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

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

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

97 **§ 58.1-439.25. Definitions.**

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

99 "Eligible student with a disability" means a student (i) for whom an individualized educational
100 program has been written and finalized in accordance with the federal Individuals with Disabilities
101 Education Act (IDEA), regulations promulgated pursuant to IDEA, and regulations of the Board of
102 Education; (ii) whose family's annual household income is not in excess of 400 percent of the current
103 poverty guidelines; and (iii) who otherwise is a student as defined in this section.

104 "Poverty guidelines" means the poverty guidelines for the 48 contiguous states and the District of
105 Columbia updated annually in the Federal Register by the U.S. Department of Health and Human
106 Services under the authority of § 673(2) of the Omnibus Budget Reconciliation Act of 1981.

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

109 "Scholarship foundation" means a nonstock, nonprofit corporation that is (i) exempt from taxation
110 under § 501(c)(3) of the Internal Revenue Code of 1954, as amended or renumbered; (ii) approved by
111 the Department of Education in accordance with the provisions of § 58.1-439.27; and (iii) established to
112 provide financial aid for the education of students residing in the Commonwealth.

113 "*Scholastic assistance*" means counseling or supportive services to elementary or secondary school
114 students or their parents in developing a postsecondary academic or vocational education plan,
115 including college financing options for such students or their parents, provided by a scholastic
116 assistance organization at a public school with which the organization is under contract.

117 "*Scholastic assistance organization*" means a neighborhood organization, as defined in § 58.1-439.18,
118 that also meets the eligibility requirements set forth in subdivision B 3 of § 58.1-439.20:1 and works
119 under contract with a public school in the Commonwealth to provide scholastic assistance.

120 "Student" means a child who is a resident of Virginia and (i) in the current school year has enrolled

121 and attended a public school in the Commonwealth for at least one-half of the year, (ii) for the school
122 year that immediately preceded his receipt of a scholarship foundation scholarship was enrolled and
123 attended a public school in the Commonwealth for at least one-half of the year, (iii) is a prior recipient
124 of a scholarship foundation scholarship, (iv) is eligible to enter kindergarten or first grade, or (v) for the
125 school year that immediately preceded his receipt of a scholarship foundation scholarship was domiciled
126 in a state other than the Commonwealth and did not attend a nonpublic school in the Commonwealth for
127 more than one-half of the school year.

128 **§ 58.1-439.26. Tax credit for donations to certain scholarship foundations and scholastic**
129 **assistance organizations.**

130 A. Notwithstanding the provisions of § 30-19.1:11, for taxable years beginning on or after January 1,
131 2013, but before January 1, 2028, a person shall be eligible to earn a credit against any tax due under
132 Article 2 (§ 58.1-320 et seq.) or Article 10 (§ 58.1-400 et seq.), Chapter 12 (§ 58.1-1200 et seq.),
133 Chapter 25 (§ 58.1-2500 et seq.), or Article 2 (§ 58.1-2620 et seq.) of Chapter 26 in an amount equal to
134 65 percent of the value of the monetary or marketable securities donation made by the person to a
135 scholarship foundation *or scholastic assistance organization* included on the list published annually by
136 the Department of Education in accordance with the provisions of ~~§ 58.1-439.28~~ § 58.1-439.27.

137 No tax credit shall be allowed under this article if the value of the monetary or marketable securities
138 donation made by an individual is less than \$500. In addition, tax credits shall be issued only for the
139 first \$125,000 in value of donations made by the individual during the taxable year. The maximum
140 aggregate donations of \$125,000 for the taxable year for which tax credits may be issued and the
141 minimum required donation of \$500 shall apply on an individual basis. Such limitation on the maximum
142 amount of tax credits issued to an individual shall not apply to credits issued to any business entity,
143 including a sole proprietorship.

144 B. Tax credits shall be issued to persons making monetary or marketable securities donations to
145 scholarship foundations *or scholastic assistance organizations* by the Department of Education on a
146 first-come, first-served basis in accordance with procedures established by the Department of Education
147 under the following conditions:

148 1. The total amount of tax credits that may be issued each fiscal year under this article shall not
149 exceed \$25 million.

150 2. The amount of the credit shall not exceed the person's tax liability pursuant to Article 2
151 (§ 58.1-320 et seq.) or Article 10 (§ 58.1-400 et seq.), Chapter 12 (§ 58.1-1200 et seq.), Chapter 25
152 (§ 58.1-2500 et seq.), or Article 2 (§ 58.1-2620 et seq.) of Chapter 26, as applicable, for the taxable year
153 for which the credit is claimed. Any credit not usable for the taxable year for which first allowed may
154 be carried over for credit against the taxes imposed upon the person pursuant to Article 2 (§ 58.1-320 et
155 seq.) or Article 10 (§ 58.1-400 et seq.), Chapter 12 (§ 58.1-1200 et seq.), Chapter 25 (§ 58.1-2500 et
156 seq.), or Article 2 (§ 58.1-2620 et seq.) of Chapter 26, as applicable, in the next five succeeding taxable
157 years or until the total amount of the tax credit has been taken, whichever is sooner.

158 The amount of any credit attributable to a partnership, electing small business corporation (S
159 corporation), or limited liability company shall be allocated to the individual partners, shareholders, or
160 members, respectively, in proportion to their ownership or interest in such business entities.

161 C. In a form approved by the Department of Education, the person seeking to make a monetary or
162 marketable securities donation to a scholarship foundation *or scholastic assistance organization*, or a
163 scholarship foundation *or scholastic assistance organization* on behalf of such person, shall request
164 ~~preauthorization~~ *authorization* for a specified tax credit amount from the Superintendent of Public
165 Instruction. The Department of Education's ~~preauthorization~~ *authorization* notice shall accompany the
166 monetary or marketable securities donation from the person to the scholarship foundation *or scholastic*
167 *assistance organization*, which shall, within 40 days, return the notice to the Department of Education
168 certifying the value and type of donation and date received. Upon receipt and approval by the
169 Department of Education of the ~~preauthorization~~ *authorization* notice with required supporting
170 documentation and certification of the value and type of the donation by the scholarship foundation *or*
171 *scholastic assistance organization*, the Superintendent of Public Instruction shall as soon as practicable,
172 and in no case longer than 30 days, issue a tax credit certificate to the person eligible for the tax credit.
173 The person shall attach the tax credit certificate to the applicable tax return filed with the Department of
174 Taxation or the State Corporation Commission, as applicable. The Department of Education shall
175 provide a copy of the tax credit certificate to the scholarship foundation *or scholastic assistance*
176 *organization*.

177 ~~Preauthorization~~ *Authorization* notices not acted upon by a donor within 180 days of issuance shall
178 be void. No tax credit shall be approved by the Department of Education for activities that are a part of
179 a person's normal course of business.

180 **§ 58.1-439.27. Scholarship foundation and scholastic assistance organization eligibility and**
181 **requirements; list of foundations and organizations receiving donations.**

182 A. Persons seeking to receive and administer tax-credit-approved funds shall submit information to
183 the Department of Education, which shall determine whether an applicant is a scholarship foundation or
184 *scholastic assistance organization* as defined in § 58.1-439.25. The Department of Education shall
185 prescribe through guidelines what reasonable information shall be submitted by such persons. Notice of
186 approval or denial, including reasons for denial, shall be issued by the Department of Education to the
187 applicant within 60 days after the complete information is submitted. Any approval shall not be withheld
188 unreasonably.

189 B. *The Department of Education shall publish annually on its website a list of each scholarship*
190 *foundation and scholastic assistance organization qualified under this article. Once a foundation or*
191 *organization has been qualified by the Department of Education, it shall remain qualified until the*
192 *Department removes the foundation or organization from its annual list. The Department of Education*
193 *shall remove a foundation or organization if it no longer meets the requirements of this article. The*
194 *Department of Education may periodically require a qualified foundation or organization to submit*
195 *updated or additional information for the purposes of determining whether or not the foundation or*
196 *organization continues to meet the requirements of this article.*

197 C. The Department of Education shall submit a list of all scholarship foundations *and scholastic*
198 *assistance organizations* that received donations for which tax credits were issued under this article to
199 the Chairmen of the House and Senate Finance Committees no later than December 1 of each year. The
200 list shall report such scholarships for the 12-month period ending on the immediately preceding June 30.

201 **§ 58.1-439.28. Guidelines for scholarship foundations.**

202 A. As a condition for qualification by the Department of Education, a scholarship foundation, as
203 ~~defined in § 58.1-439.25~~ and included on the list published annually by the Department of Education
204 pursuant to ~~this section~~, § 58.1-439.27 shall disburse an amount at least equal to 90 percent of the value
205 of the donations it receives (for which tax credits were issued under this article) during each 12-month
206 period ending on June 30 by the immediately following June 30 for qualified educational expenses
207 through scholarships to eligible students. Tax-credit-derived funds not used for such scholarships may
208 only be used for the administrative expenses of the scholarship foundation. Any scholarship foundation
209 that fails to meet such disbursement requirement shall, for the first offense, be required to pay a civil
210 penalty equal to ~~200 percent~~ of the difference between 90 percent of the value of the tax-credit-derived
211 donations it received in the applicable 12-month period and the amount that was actually disbursed.
212 Such civil penalty shall be remitted by the scholarship foundation to the Department of Education within
213 30 days after the end of the one-year period and deposited to the general fund. For a second offense
214 within a five-year period, the scholarship foundation shall be removed from the annual list published
215 pursuant to this section and shall not be entitled to request preauthorization for additional tax credits,
216 nor shall it be entitled to receive and administer additional tax-credit-derived funds for two years. After
217 two years, the scholarship foundation shall be eligible to reapply to be included on the annual list to
218 receive and administer tax-credit derived funds. If a scholarship foundation is authorized to be added to
219 the annual list after such reapplication, the scholarship foundation shall not be considered to have any
220 previous offenses for purposes of this subsection. The required disbursement under this section shall
221 begin with donations received for the period January 1, 2013, through June 30, 2014.

222 B. By September 30 of each year beginning in 2016, the scholarship foundation shall provide the
223 following information to the Department of Education: (i) the total number and value of donations
224 received by the foundation during the 12-month period ending on June 30 of the prior calendar year for
225 which tax credits were issued by the Superintendent of Public Instruction, (ii) the dates when such
226 donations were received, and (iii) the total number and dollar amount of qualified educational expenses
227 scholarships awarded from tax-credit-derived donations and disbursed by the scholarship foundation
228 during the 24-month period ending on June 30 of the current calendar year. Any scholarship foundation
229 that fails to provide this report by September 30 shall, for the first offense, be required to pay a \$1,000
230 civil penalty. Such civil penalty shall be remitted by the scholarship foundation to the Department of
231 Education by November 1 of the same year and deposited to the general fund. For a second offense
232 within a five-year period, the scholarship foundation shall be removed from the annual list published
233 pursuant to this section and shall not be entitled to request preauthorization for additional tax credits,
234 nor shall it be entitled to receive and administer additional tax-credit-derived funds. After two years, the
235 scholarship foundation shall be eligible to reapply to be included on the annual list to receive and
236 administer tax-credit derived funds. If a scholarship foundation is authorized to be added to the annual
237 list after such reapplication, the scholarship foundation shall not be considered to have any previous
238 offenses for purposes of this subsection.

239 C. In awarding scholarships from tax-credit-derived funds, the scholarship foundation shall (i)
240 provide scholarships for qualified educational expenses only to students whose family's annual household
241 income is not in excess of 300 percent of the current poverty guidelines or eligible students with a
242 disability, (ii) not limit scholarships to students of one school, and (iii) comply with Title VI of the
243 Civil Rights Act of 1964, as amended. Payment of scholarships from tax-credit-derived funds by the

244 eligible scholarship foundation shall be by individual warrant or check made payable to and mailed to
 245 the eligible school that the student's parent or legal guardian indicates. In mailing such scholarship
 246 payments, the eligible scholarship foundation shall include a written notice to the eligible school that the
 247 source of the scholarship was donations made by persons receiving tax credits for the same pursuant to
 248 this article.

249 D. Scholarship foundations shall ensure that schools selected by students to which tax-credit-derived
 250 funds may be paid (i) are in compliance with the Commonwealth's and locality's health and safety laws
 251 and codes; (ii) hold a valid occupancy permit as required by the locality; (iii) comply with Title VI of
 252 the Civil Rights Act of 1964, as amended; and (iv) are nonpublic schools that comply with nonpublic
 253 school accreditation requirements as set forth in § 22.1-19 and administered by the Virginia Council for
 254 Private Education or nonpublic schools that maintain an assessment system that annually measures
 255 scholarship students' progress in reading and math using a national norm-referenced achievement test,
 256 including but not limited to the Stanford Achievement Test, California Achievement Test, and Iowa Test
 257 of Basic Skills.

258 Eligible schools shall compile the results of any national norm-referenced achievement test for each
 259 of its students receiving tax-credit-derived scholarships and shall provide the respective parents or legal
 260 guardians of such students with a copy of the results on an annual basis, beginning with the first year of
 261 testing of the student. Such schools also shall annually provide to the Department of Education for each
 262 such student the achievement test results, beginning with the first year of testing of the student, and
 263 student information that would allow the Department to aggregate the achievement test results by grade
 264 level, gender, family income level, number of years of participation in the scholarship program, and
 265 race. Beginning with the third year of testing of each such student and test-related data collection, the
 266 Department of Education shall ensure that the achievement test results and associated learning gains are
 267 published on the Department of Education's website in accordance with such classifications and in an
 268 aggregate form as to prevent the identification of any student. Eligible schools shall annually provide to
 269 the Superintendent of Public Instruction graduation rates of its students participating in the scholarship
 270 program in a manner consistent with nationally recognized standards. In publishing and disseminating
 271 achievement test results and other information, the Superintendent of Public Instruction and the
 272 Department of Education shall ensure compliance with all student privacy laws.

273 E. The aggregate amount of scholarships provided to each student for any single school year by all
 274 eligible scholarship foundations from eligible donations shall not exceed the lesser of (i) the actual
 275 qualified educational expenses of the student or (ii) 100 percent of the per-pupil amount distributed to
 276 the local school division (in which the student resides) as the state's share of the standards of quality
 277 costs using the composite index of ability to pay as defined in the general appropriation act.

278 F. Scholarship foundations shall develop procedures for disbursing scholarships in quarterly or
 279 semester payments throughout the school year to ensure scholarships are portable.

280 G. Scholarship foundations that receive donations of marketable securities for which tax credits were
 281 issued under this article shall be required to sell such securities and convert the donation into cash
 282 immediately, but in no case more than 21 days after receipt of the donation.

283 H. Each scholarship foundation with total revenues (including the value of all donations) (i) in excess
 284 of \$100,000 for the foundation's most recent fiscal year ended shall have an audit or review performed
 285 by an independent certified public accountant of the foundation's donations received in such year for
 286 which tax credits were issued under this article or (ii) of \$100,000 or less for the foundation's most
 287 recent fiscal year ended shall have a compilation performed by an independent certified public
 288 accountant of the foundation's donations received in such year for which tax credits were issued under
 289 this article. A summary report of the audit, review, or compilation shall be made available to the public
 290 and the Department of Education upon request.

291 I. The Department of Education shall publish annually on its website a list of each scholarship
 292 foundation qualified under this article. Once a foundation has been qualified by the Department of
 293 Education, it shall remain qualified until the Department removes the foundation from its annual list.
 294 The Department of Education shall remove a foundation from the annual list if it no longer meets the
 295 requirements of this article. The Department of Education may periodically require a qualified
 296 foundation to submit updated or additional information for purposes of determining whether or not the
 297 foundation continues to meet the requirements of this article.

298 J. Actions of the Superintendent of Public Instruction or the Department of Education relating to the
 299 awarding of tax credits under this article and the qualification of scholarship foundations shall be exempt
 300 from the provisions of the Administrative Process Act (§—2.2-4000 et seq.). Decisions of the
 301 Superintendent of Public Instruction or the Department of Education shall be final and not subject to
 302 review or appeal.

303 **§ 58.1-439.29. Guidelines for scholastic assistance organizations.**

304 A. As a condition for qualification by the Department of Education, a scholastic assistance

305 organization included on the list published annually by the Department of Education pursuant to
306 § 58.1-439.27 shall disburse an amount equal to at least 90 percent of the value of the donations it
307 receives for which tax credits were issued under this article during each 12-month period ending on
308 June 30 by the immediately following June 30 for scholastic assistance. Tax-credit-derived funds not
309 used for such assistance may only be used for the administrative expenses of the scholastic assistance
310 organization. Any scholastic assistance organization that fails to meet such disbursement requirement shall,
311 for the first offense, be required to pay a civil penalty equal to the difference between 90 percent of the
312 value of the tax-credit-derived donations it received in the applicable 12-month period and the amount
313 that was actually disbursed. Such civil penalty shall be remitted by the scholastic assistance
314 organization to the Department of Education within 30 days after the end of the one-year period and
315 deposited to the general fund. For a second offense within a five-year period, the scholastic assistance
316 organization shall be removed from the annual list published pursuant to § 58.1-439.27 and shall not be
317 entitled to request preauthorization for additional tax credits, nor shall it be entitled to receive and
318 administer additional tax-credit-derived funds for two years. After two years, the scholastic assistance
319 organization shall be eligible to reapply to be included on the annual list to receive and administer
320 tax-credit derived funds. If a scholastic assistance organization is authorized to be added to the annual
321 list after such reapplication, the organization shall not be considered to have any previous offenses for
322 purposes of this subsection.

323 B. By September 30 of each year beginning in 2020, the scholastic assistance organization shall
324 provide the following information to the Department of Education: (i) the total number and value of
325 donations received by the organization during the 12-month period ending on June 30 of the prior
326 calendar year for which tax credits were issued by the Superintendent of Public Instruction, (ii) the
327 dates when such donations were received, (iii) a description of the types of scholastic assistance
328 provided, and (iv) the number of students provided scholastic assistance. Any scholastic assistance
329 organization that fails to provide this report by September 30 shall, for the first offense, be required to
330 pay a \$1,000 civil penalty. Such civil penalty shall be remitted by the scholastic assistance organization
331 to the Department of Education by November 1 of the same year and deposited to the general fund. For
332 a second offense within a five-year period, the scholastic assistance organization shall be removed from
333 the annual list published pursuant to § 58.1-439.27 and shall not be entitled to request preauthorization
334 for additional tax credits, nor shall it be entitled to receive and administer additional tax-credit-derived
335 funds. After two years, the scholastic assistance organization shall be eligible to reapply to be included
336 on the annual list to receive and administer tax-credit derived funds. If a scholastic assistance
337 organization is authorized to be added to the annual list after such reapplication, the scholastic
338 assistance organization shall not be considered to have any previous offenses for purposes of this
339 subsection.

340 C. Scholastic assistance organizations that receive donations of marketable securities for which tax
341 credits were issued under this article shall be required to sell such securities and convert the donation
342 into cash immediately, but in no case more than 21 days after receipt of the donation.

343 D. Each scholastic assistance organization with total revenues (including the value of all donations)
344 (i) in excess of \$100,000 for the organization's most recent fiscal year ended shall have an audit or
345 review performed by an independent certified public accountant of the organization's donations received
346 in such year for which tax credits were issued under this article or (ii) of \$100,000 or less for the
347 organization's most recent fiscal year ended shall have a compilation performed by an independent
348 certified public accountant of the organization's donations received in such year for which tax credits
349 were issued under this article. A summary report of the audit, review, or compilation shall be made
350 available to the public and the Department of Education upon request.

351 **§ 58.1-439.30. Decisions related to the award of tax credits.**

352 Actions of the Superintendent of Public Instruction or the Department of Education relating to the
353 awarding of tax credits under this article and the qualification of scholarship foundations and scholastic
354 assistance organizations shall be exempt from the provisions of the Administrative Process Act
355 (§ 2.2-4000 et seq.). Decisions of the Superintendent of Public Instruction or the Department of
356 Education shall be final and not subject to review or appeal.

357 **[2. That the provisions of this act shall not become effective unless an appropriation effectuating**
358 **the purposes of this act is included in a general appropriation act passed in 2019 by the General**
359 **Assembly that becomes law.]**