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SENATE BILL NO. 1754

Offered January 18, 2019

A BILL to amend and reenact §§ 58.1-439.18, 58.1-439.20:1, and 58.1-439.24 of the Code of Virginia, relating to Neighborhood Assistance Act tax credits.

Patrons—Hanger, Deeds and Mason; Delegate: Toscano

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-439.18, 58.1-439.20:1, and 58.1-439.24 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-439.18. Definitions.

As used in this article:

"Affiliate" means with respect to any person, any other person directly or indirectly controlling, controlled by, or under common control with such person. For purposes of this definition, "control" (including controlled by and under common control with) shall mean the power, directly or indirectly, to direct or cause the direction of the management and policies of such person whether through ownership or voting securities or by contract or otherwise.

"Business firm" means any corporation, partnership, electing small business (Subchapter S) corporation, limited liability company, or sole proprietorship authorized to do business in this Commonwealth subject to tax imposed by Articles 2 (§ 58.1-320 et seq.) and 10 (§ 58.1-400 et seq.) of Chapter 3, Chapter 12 (§ 58.1-1200 et seq.), Article 1 (§ 58.1-2500 et seq.) of Chapter 25, or Article 2 (§ 58.1-2620 et seq.) of Chapter 26. "Business firm" also means any trust or fiduciary for a trust subject to tax imposed by Article 6 (§ 58.1-360 et seq.) of Chapter 3.

"Commissioner of Social Services" means the Commissioner of Social Services or his designee.

"Community services" means any type of counseling and advice, emergency assistance, medical care, provision of basic necessities, or services designed to minimize the effects of poverty, furnished primarily to low-income persons.

"Contracting services" means the provision, by a business firm licensed by the Commonwealth as a contractor under Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1, of labor or technical advice to aid in the development, construction, renovation, or repair of (i) homes of low-income persons or (ii) buildings used by neighborhood organizations.

"Education" means any type of scholastic instruction or scholastic assistance to a low-income person or an eligible student with a disability.

"Eligible student with a disability" means a student who is a resident of Virginia (i) for whom an individualized educational program has been written and finalized in accordance with the federal Individuals with Disabilities Education Act (IDEA), regulations promulgated pursuant to IDEA, and regulations of the Board of Education and (ii) whose family's annual household income is not in excess of 400 percent of the current poverty guidelines.

"Housing assistance" means furnishing financial assistance, labor, material, or technical advice to aid the physical improvement of the homes of low-income persons.

"Job training" means any type of instruction to an individual who is a low-income person that enables him to acquire vocational skills so that he can become employable or able to seek a higher grade of employment.

"Low-income person" means an individual who is a resident of Virginia and whose family's annual household income is not in excess of 300 percent of the current poverty guidelines.

"Neighborhood assistance" means providing community services, education, housing assistance, or job training.

"Neighborhood organization" means any local, regional or statewide organization whose primary function is providing neighborhood assistance and holding a ruling from the Internal Revenue Service of the United States Department of the Treasury that the organization is exempt from income taxation under the provisions of §§ 501(c)(3) and 501(c)(4) of the Internal Revenue Code of 1986, as amended from time to time, or any organization defined as a community action agency in the Economic Opportunity Act of 1964 (42 U.S.C. § 2701 et seq.), or any housing authority as defined in § 36-3.

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

"Professional services" means any type of personal service to the public that requires as a condition

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59 precedent to the rendering of such service the obtaining of a license or other legal authorization and  
60 shall include, but shall not be limited to, the personal services rendered by medical doctors, dentists,  
61 architects, professional engineers, certified public accountants, attorneys-at-law, and veterinarians.

62 "Scholastic assistance" means (i) counseling or supportive services to elementary school, middle  
63 school, secondary school, or postsecondary school students or their parents in developing a  
64 postsecondary academic or vocational education plan, including college financing options for such  
65 students or their parents, or (ii) scholarships.

66 **§ 58.1-439.20:1. Proposals to the Department of Education; guidelines; tax credits authorized.**

67 A. Any neighborhood organization may submit education proposals to the Superintendent of Public  
68 Instruction requesting an allocation of tax credits for use by business firms making donations to the  
69 neighborhood organization. All other neighborhood organization proposals shall be submitted to the  
70 Commissioner or Social Services pursuant to § 58.1-439.20.

71 The proposal shall set forth the program to be conducted by the neighborhood organization, the  
72 low-income persons or eligible students with disabilities to be assisted, the estimated amount to be  
73 donated to the program, and the plans for implementing the program.

74 B. 1. The Department of Education is hereby authorized to adopt guidelines for the approval or  
75 disapproval of such proposals by neighborhood organizations and for determining the value of the  
76 donations.

77 2. In order to be eligible to receive an allocation of tax credits pursuant to this article, a  
78 neighborhood organization shall have been in existence for at least one year. As a prerequisite for  
79 approval, neighborhood organizations with total revenues of (i) more than \$100,000 shall provide to the  
80 Department of Education an audit or review for the most recent year or (ii) \$100,000 or less shall  
81 provide to the Department of Education a compilation for the most recent year. Such audit, review, or  
82 compilation shall be performed by an independent certified public accountant. For purposes of this  
83 subdivision, "total revenues" means all revenues, including the value of all donations, for the  
84 organization's most recent year. No proposal for an allocation of tax credits shall be untimely filed  
85 solely because such audit, review, or compilation was not submitted by the neighborhood organization  
86 by the proposal filing deadline, provided that the audit, review, or compilation is submitted to the  
87 Superintendent of Public Instruction within the 30-day period immediately following such deadline.

88 3. In order to be eligible to receive an allocation of credits pursuant to this article, at least 50 percent  
89 of the persons served by the neighborhood organization, *either directly by the neighborhood*  
90 *organization or through the provision of revenues to other organizations or groups serving such*  
91 *persons*, shall be low-income persons or eligible students with disabilities and at least 50 percent of the  
92 neighborhood organization's revenues shall be used to provide services to low-income persons or to  
93 eligible students with disabilities, *either directly by the neighborhood organization or through the*  
94 *provision of revenues to other organizations or groups providing such services*. Expenditures for teacher  
95 salaries shall count toward the requirement that at least 50 percent of revenues be used to provide  
96 services to low-income persons or to eligible students with disabilities.

97 4. In order for a proposal to be approved, an applicant neighborhood organization and any of its  
98 affiliates shall meet the requirements of this section and the application guidelines. However, beginning  
99 with tax credit allocations for fiscal year 2014-2015 and ending with tax credit allocations for fiscal year  
100 2019-2020, such requirement for a proposal submitted by a neighborhood organization to the  
101 Superintendent of Public Instruction shall not apply in determining eligibility of the neighborhood  
102 organization submitting the proposal, provided that (i) the neighborhood organization otherwise meets all  
103 statutory requirements and regulations, (ii) the neighborhood organization received a fiscal year  
104 2011-2012 allocation of neighborhood assistance tax credits, and (iii) no affiliate of the neighborhood  
105 organization submits a proposal for or receives an allocation of tax credits pursuant to this article for the  
106 program year for which the neighborhood organization has submitted its proposal.

107 5. The guidelines shall provide for the equitable allocation of the available amount of tax credits  
108 among the approved proposals submitted by neighborhood organizations. In any year in which the  
109 available amount of tax credits exceeds the previous year's available amount, at least 10 percent of the  
110 excess amount shall be allocated to qualified programs proposed by neighborhood organizations that did  
111 not receive any allocations in the preceding year. If the amount of tax credits requested by such  
112 neighborhood organizations is less than 10 percent of the excess amount, the unallocated portion of such  
113 10 percent shall be allocated to qualified programs proposed by other neighborhood organizations.

114 C. 1. If the Superintendent of Public Instruction approves a proposal submitted by a neighborhood  
115 organization, the organization shall make the allocated tax credit amounts available to business firms  
116 making donations to the approved program. A neighborhood organization shall not assign or transfer an  
117 allocation of tax credits to another neighborhood organization without the approval of the Superintendent  
118 of Public Instruction.

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

121 neighborhood organization affiliates for all education proposals.

122 3. If, after the initial allocation of credits to approved proposals, the Department of Education has a  
123 balance of tax credits remaining for the fiscal year that can be used or allocated by a neighborhood  
124 organization for a proposal that had been approved for tax credits during the initial allocation, then the  
125 Superintendent of Public Instruction shall reallocate the remaining balance of tax credits to such  
126 previously approved proposals to the extent that a neighborhood organization can use or allocate  
127 additional tax credits for the previously approved proposal. The \$0.825 million annual limitations for tax  
128 credits approved to a grouping of neighborhood organization affiliates shall be inapplicable for such  
129 reallocation of any balance of tax credits. The balance of tax credits remaining for reallocation shall  
130 include the amount of any tax credits that have been granted for a proposal approved during the initial  
131 allocation but for which the Superintendent of Public Instruction received notice from the neighborhood  
132 organization that it will not be able to use or allocate such amount for the approved proposal.

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

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

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

147 **§ 58.1-439.24. Donations by individuals.**

148 For purposes of this section, the term "individual" means the same as that term is defined in  
149 § 58.1-302, but excluding any individual included in the definition of a "business firm" as such term is  
150 defined in § 58.1-439.18.

151 A. Notwithstanding any provision of this article limiting eligibility for tax credits, an individual  
152 making a monetary donation or a donation of marketable securities to a neighborhood organization  
153 approved under this article shall be eligible for a credit against taxes imposed by § 58.1-320 as provided  
154 in this section.

155 B. Notwithstanding any provision of this article specifying the amount of a tax credit, a tax credit  
156 issued to an individual making a monetary donation or a donation of marketable securities to an  
157 approved project shall be equal to 65 percent of the value of such donation; however, tax credits (i)  
158 shall not be issued for any donation made in the taxable year with a value of less than \$500 and (ii)  
159 shall be issued only for the first \$125,000 in value of donations made by the individual during the  
160 taxable year. The maximum aggregate donations of \$125,000 for the taxable year for which tax credits  
161 may be issued and the minimum required donation of \$500 shall apply on an individual basis.

162 C. An individual shall be eligible for a tax credit under this section only to the extent that sufficient  
163 tax credits allocated to the neighborhood organization approved under this article are available.  
164 Notwithstanding that this section establishes a tax credit of 65 percent of the value of the qualified  
165 donation, an individual may by written agreement accept a lesser tax credit percentage from a  
166 neighborhood organization for any otherwise qualified donation he has made.

167 D. The amount of credit allowed pursuant to this section, if such credit has been issued by the  
168 Superintendent of Public Instruction or the Commissioner of Social Services, shall not exceed the tax  
169 imposed pursuant to § 58.1-320 for such taxable year. Any credit not usable for the taxable year may  
170 be carried over for credit against the individual's income taxes until the earlier of (i) the full amount of  
171 the credit is used or (ii) the expiration of the fifth taxable year after the taxable year in which the tax  
172 credit has been issued to such individual. If an individual that is subject to the tax limitation imposed  
173 pursuant to this subsection is allowed another credit pursuant to any other section of the Code of  
174 Virginia, or has a credit carryover from a preceding taxable year, such individual shall be considered to  
175 have first utilized any credit allowed that does not have a carryover provision, and then any credit that  
176 is carried forward from a preceding taxable year, prior to the utilization of any credit allowed pursuant  
177 to this section.

178 E. A tax credit shall be issued by the Superintendent of Public Instruction or the Commissioner of  
179 Social Services to an individual only upon receipt of a certification made by a neighborhood  
180 organization to whom tax credits were allocated for an approved program pursuant to § 58.1-439.20 *or*  
181 § 58.1-439.20:1.

**182** The certification shall identify the type and value of the donation received, the individual making the  
**183** donation, and the tax credit percentage to be used in determining the amount of the tax credit. The  
**184** certification shall also include any written agreement under which an individual accepts a tax credit of  
**185** less than 65 percent for a donation.