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**HOUSE BILL NO. 599****AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the House Committee on Finance  
on February 1, 2010)

(Patron Prior to Substitute—Delegate Massie)

A *BILL to amend the Code of Virginia by adding in Chapter 3 of Title 58.1 an article numbered 13.3, consisting of sections numbered 58.1-439.25 through 58.1-439.28, relating to the Public/Private Education Investment tax credit.*

**Be it enacted by the General Assembly of Virginia:**

**1. That the Code of Virginia is amended by adding in Chapter 3 of Title 58.1 an article numbered 13.3, consisting of sections numbered 58.1-439.25 through 58.1-439.28, as follows:**

*Article 13.3.*

*Public/Private Education Investment Tax Credit.*

*§ 58.1-439.25. Definitions.*

*As used in this article:*

*"Business entity" means a business that is subject to the taxes imposed by Article 2 (§ 58.1-320 et seq.) or 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.*

*"Federal Free and Reduced Lunch Program" means the federal program established under 42 U.S.C. § 1751.*

*"Individual taxpayer" means an individual subject to the taxes imposed by Article 2 (§ 58.1-320 et seq.) of Chapter 3.*

*"Qualified educational expenses" means school-related tuition.*

*"Scholarship foundation" means a nonstock, nonprofit corporation that is exempt from taxation under § 501(c)(3) of the Internal Revenue Code of 1986, as amended, and established in part to provide financial aid for the education of students residing in the Commonwealth.*

*"Student" means a child who is a resident of Virginia and (i) enrolled in the Commonwealth's public schools for the year prior to receiving a scholarship foundation scholarship, (ii) eligible for the first time to enroll in the Commonwealth's public schools, or (ii) is a prior recipient of a scholarship foundation scholarship.*

*§ 58.1-439.26. Tax credit for donations to scholarship foundations by business entities and individual taxpayers.*

*A. 1. For taxable years beginning on and after January 1, 2011, a business entity may receive a credit against any tax due under Article 2 (§ 58.1-320 et seq.) or 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, in an amount equal to 90 percent of the contribution to a scholarship foundation included on the list published annually by the Department in accordance with the provisions of § 58.1-439.27, except that no business entity shall receive any credit against any bank franchise tax imposed by a city, town, or county under the authority granted in § 58.1-1208, § 58.1-1209 or § 58.1-1210.*

*2. For taxable years beginning on and after January 1, 2011, an individual taxpayer may receive a credit against any tax due under Article 2 (§ 58.1-320 et seq.) of Chapter 3, in an amount equal to 90 percent of the contribution to a scholarship foundation included on the list published annually by the Department in accordance with the provisions of § 58.1-439.27. However, such amount shall not exceed \$800 for an individual taxpayer and \$1,200 for taxpayers filing a joint return.*

*B. Tax credits shall be awarded to business entities by the Department of Taxation on a first-come, first-served basis in accordance with procedures established by the Department under the following conditions:*

*1. The total amount of tax credits that may be granted each fiscal year under this section shall not exceed \$20 million, with \$10 million granted for contributions made by business entities and \$10 million granted for contributions made by individual taxpayers.*

*2. Credits granted to a partnership, electing small business (Subchapter S) corporation, or limited liability company shall be allocated to its individual partners, shareholders, or members, respectively, in proportion to their ownership or interest in such business entities.*

*3. Any tax credit that is not used by a business entity or individual taxpayer in the taxable year following the year in which the contribution is made shall not be carried forward or carried back and shall not be refundable or transferable.*

*4. Every business entity and individual taxpayer seeking the credit allowed under this section shall submit with the income tax return verification from each scholarship foundation to which monetary*

60 donations have been made by the taxpayer during the taxable year.

61 C. In a form approved by the Department, business entities shall request and receive  
62 preauthorization for a specified tax credit amount from the Department. The Department's  
63 preauthorization notice shall accompany the donation from the business entity to the nonprofit education  
64 foundation, which shall, within 10 days, return the notice to the Department certifying the amount of the  
65 donation and date received. Preauthorization notices not acted upon by the business entity within 30  
66 days of issuance shall be void. No tax credit shall be approved by the Department for activities that are  
67 a part of a business entity's normal course of business.

68 § 58.1-439.27. Scholarship foundation eligibility and requirements; list of foundations receiving  
69 contributions.

70 A. Scholarship foundations seeking to receive and administer tax-credit-approved funds shall submit  
71 information to the Department, which shall determine whether an applicant is a scholarship foundation  
72 as defined in § 58.1-439.25. The Department shall prescribe through regulations what information shall  
73 be submitted by such foundations. Notice of approval or denial, including reasons for denial, shall be  
74 issued by the Department to the applicant within 60 days after the information is submitted.

75 B. The Department shall submit a list of all scholarship foundations receiving contributions from  
76 business entities and individual taxpayers to the Chairmen of the House and Senate Finance Committees  
77 no later than December 1 of each year.

78 § 58.1-439.28. Guidelines for scholarship foundations.

79 A. A scholarship foundation, as defined in § 58.1-439.25 and included on the list published annually  
80 by the Department in accordance with the provisions of § 58.1-439.27, shall disburse annually at least  
81 90 percent of its tax-credit-derived funds for qualified educational expenses through scholarships to  
82 eligible students.

83 B. In awarding scholarships, the scholarship foundation shall (i) provide them to any student whose  
84 family's annual household income is less than 250 percent of the amount required to qualify for the  
85 federal Free and Reduced Lunch Program, (ii) not limit scholarships to students of one school, and (iii)  
86 not discriminate on the basis of race, color, national origin, or disability. Payment of the scholarship by  
87 the eligible scholarship foundation shall be by individual warrant or check made payable to and mailed  
88 to the eligible school that the student's parent or legal guardian indicates.

89 C. Scholarship foundations shall ensure that eligible schools selected by scholarship students (i) are  
90 in compliance with the Commonwealth's and locality's health and safety laws and codes; (ii) hold a  
91 valid occupancy permit as required by the locality; (iii) do not discriminate on the basis of religion,  
92 race, color, or national origin; and (iv) comply with nonpublic school accreditation requirements as set  
93 forth in § 22.1-19 and administered by the Virginia Council for Private Education.

94 D. The amount of a scholarship provided to any student for any single school year by all eligible  
95 scholarship foundations from eligible contributions shall not exceed the lesser of (i) the actual tuition  
96 incurred or (ii) the per-pupil amount distributed to each local school division as the state's share of the  
97 standards of quality costs using the composite index of ability to pay as defined in the general  
98 appropriation act.

99 E. Scholarship foundations shall (i) provide receipts, approved by the Department, to individual  
100 taxpayers for their contributions and (ii) develop procedures for disbursing scholarships in periodic  
101 payments throughout the school year to ensure scholarships are portable.

102 F. An audit of the scholarship foundation's tax-credit-derived funds, which complies with uniform  
103 financial accounting standards and is conducted by a certified public accountant, shall be conducted  
104 annually and a summary report made available to the public upon request. The report shall include (i)  
105 the total number and dollar amount of contributions received during the previous calendar year, (ii) the  
106 total number and dollar amount of qualified educational expenses scholarships awarded during the  
107 previous calendar year, (iii) the total number and dollar amount of qualified educational expenses  
108 scholarships awarded during the previous calendar year to every student whose family's annual  
109 household income was less than 250 percent of the amount required to qualify for the federal Free and  
110 Reduced Lunch Program, and (iv) the percentage of first-time recipients of qualified educational  
111 expenses scholarships who were enrolled in a public school during the previous year.