

# DEPARTMENT OF TAXATION

## 2010 Fiscal Impact Statement

1. **Patron** James P. "Jimmie" Massie, III

3. **Committee** House Appropriations

4. **Title** Income Tax: Public /Private Education  
Investment Tax Credits

2. **Bill Number** HB 599

**House of Origin:**

       **Introduced**

  X   **Substitute**

       **Engrossed**

**Second House:**

       **In Committee**

       **Substitute**

       **Enrolled**

### 5. **Summary/Purpose:**

This bill would allow individuals and businesses to claim a tax credit for contributions to TAX-approved scholarship foundations that provide financial assistance to students in the Commonwealth. The total amount of credits in any given fiscal year would be capped at \$10 million for individual taxpayers and \$10 million for business entities. In addition, the amount of credit claimed by individuals in a taxable year would be limited to \$800, or \$1,200 if filing jointly.

This bill would be effective for taxable years beginning on and after January 1, 2011.

6. **Fiscal Impact Estimates are:** Preliminary. (See Line 8.)

7. **Budget amendment necessary:** Yes.

Page 1, Revenue Estimates

### 8. **Fiscal implications:**

#### Administrative Costs

TAX has not assigned any administrative costs to this bill because the changes required by a single bill such as this can be implemented as part of the annual changes to our systems and forms. As stand-alone legislation, TAX considers implementation of this bill as "routine," and does not require additional funding.

TAX will provide specific administrative costs on any legislation that is not "routine." Additionally, TAX will review all state tax legislation likely to be enacted prior to the passage by each house. If the aggregate number of routine bills likely to pass either house is unusually large, it is possible that additional resources will be required. If so, TAX will identify the costs at that time.

## Revenue Impact

This bill would have an unknown, but potentially significant, negative impact on General Fund revenue. The maximum impact that credits issued to business entities and individuals would have on revenues is \$20 million each fiscal year, beginning in Fiscal Year 2012.

According to the Department of Education ("DOE"), there is no estimate for the number of eligible students who would receive scholarships, or in what regions of the Commonwealth these students would reside. Funding from the Standards of Quality is distributed on a per-pupil-basis to local school divisions using the actual number of students reported as enrolled by the division and the per-pupil amounts vary by division.

If eligible students already enrolled in public school attend private school, DOE reports that there could be some positive impact on General Fund revenue resulting from students transferring from public schools to private schools. Any funds saved from reductions in payments to local school divisions may have to be used to offset any shortfalls in other payments from Direct Aid if these other accounts are under-funded at the close of a fiscal year. As such, any cost savings incurred would be redistributed to other localities. Provided there was no shortfall at the end of the fiscal year, then it is possible that any savings would revert to the General Fund. However, DOE could not estimate the number of students who may opt for the transfer, and is unable to make a fiscal estimate until such a program is in operation and transfers are taking place.

### **9. Specific agency or political subdivisions affected:**

Department of Taxation  
State Corporation Commission

### **10. Technical amendment necessary: Yes.**

In order to clarify that the procedures regarding this credit apply to business entities and individuals, the following technical amendments are suggested:

Page 1, line 46, after awarded to  
Strike: business entities  
Insert: taxpayers

Page 2, Line 61, after Department,  
Strike: business entities  
Insert: taxpayers

Page 2, Line 63, after from the  
Strike: business entity  
Insert: taxpayer

Page 2, Line 65, after by the  
Strike: business entity  
Insert: taxpayer

In order to clarify that this bill involves only scholarship foundations, the following technical amendment is suggested:

Page 2, Line 63, after entity to the  
Strike: nonprofit education  
Insert: scholarship

## **11. Other comments:**

### Tax Credit

Under this bill, a business entity or an individual would be able to earn a tax credit equal to 90% of contributions to a scholarship foundation. A “business entity” would be a business subject to corporate income tax, individual income tax, bank franchise tax, the license tax on insurance companies, or the tax on public service corporations. An “individual taxpayer” would be an individual subject to Virginia income tax.

The total amount of tax credits that could be granted to business entities and individuals in any fiscal year would be \$10 million each. In addition, the amount of the credit claimed by individuals in a taxable year would be limited to \$800 for an individual taxpayer and \$1,200 for taxpayers filing a joint return. Credits would be awarded to taxpayers on a first-come, first-served basis.

Taxpayers would be required to request and receive preauthorization for a specified tax credit amount from TAX. The taxpayer would be required to make the preauthorized contribution within 30 days of issuance of the notice. The preauthorization notice would accompany the donation from the taxpayer to the scholarship foundation. The foundation would be required to return the notice to TAX within 10 days certifying the amount of the donation and date received.

In addition to being preauthorized, taxpayers claiming credit for a contribution would be required to submit receipts from each scholarship foundation verifying such contribution.

Credits granted to pass-through entities would be allocated to their individual owners in proportion to their ownership or interest in such business entities. Unused amounts of the credit would not be refunded and could not be carried forward.

### Scholarship Foundations

Scholarship foundations would be required to apply to TAX in order to be approved to receive and administer tax credit-approved funds. TAX would be required to issue a notice of approval or denial, including reasons for denial to the applicant within 60 days after the application is submitted.

A "scholarship foundation" would be 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.

In awarding scholarships, the scholarship foundation would (i) provide them to any student whose family's annual household income is less than 250 percent of the amount required to qualify for the federal Free and Reduced Lunch Program, (ii) not limit scholarships to students of one school, and (iii) not discriminate on the basis of race, color, national origin, or disability. Scholarship foundations would be required to annually disburse at least 90 percent of their tax-credit-derived funds as scholarships.

Scholarship foundations would also be required to ensure that schools selected by scholarship students (i) are in compliance with the Commonwealth's and locality's health and safety laws and codes; (ii) hold a valid occupancy permit as required by the locality; (iii) do not discriminate on the basis of race, color, or national origin; and (iv) comply with nonpublic school accreditation requirements administered by the Virginia Council for Private Education.

"Student" would mean a child who is a resident of Virginia and is (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 (iii) is a prior recipient of a scholarship foundation scholarship.

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

Payment of the scholarship by the eligible scholarship foundation would be by individual warrant or check made payable to the student's parent or legal guardian.

Scholarship foundations would be required to be audited annually by a certified public accountant. TAX would be required to publish a list of approved scholarship foundations annually and submit a list of all scholarship foundations receiving contributions from business entities and individual taxpayers to the chairmen of the House and Senate Finance Committees no later than December 1 of each year.

This bill would be effective for taxable years beginning on and after January 1, 2011.

cc : Secretary of Finance

Date: 2/9/2010 TG  
HB599FS1161