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SENATE BILL NO. 1206

Offered January 9, 2013

Prefiled January 9, 2013

A *BILL to amend and reenact §§ 58.1-439.25 and 58.1-439.28 of the Code of Virginia, relating to Education Improvement Scholarships Tax Credit.*

Patron—Stanley

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-439.25 and 58.1-439.28 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-439.25. Definitions.

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

"Eligible student with a disability" means a student (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; (ii) whose family's annual household income is not in excess of 400 percent of the current poverty guidelines; and (iii) who otherwise is a student as defined in this section.

"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.

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

"Scholarship foundation" means a nonstock, nonprofit corporation that is (i) exempt from taxation under § 501(c)(3) of the Internal Revenue Code of 1954, as amended or renumbered; (ii) approved by the Department of Education in accordance with the provisions of § 58.1-439.27; and (iii) established to provide financial aid for the education of students residing in the Commonwealth. *The requirement of clause (iii) shall be met if the foundation's articles of incorporation or equivalent documents, or governing rules such as bylaws, specifically state that the foundation was established 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) is enrolled in the Commonwealth's public schools for the year prior to receiving a scholarship foundation scholarship, (ii) is a prior recipient of a scholarship foundation scholarship, (iii) is eligible to enter kindergarten or first grade, or (iv) was not a resident of Virginia during the preceding school year.

§ 58.1-439.28. Guidelines for scholarship foundations.

A. As a condition for qualification by the Department of Education, a scholarship foundation, as defined in § 58.1-439.25 and included on the list published annually by the Department of Education pursuant to this section, shall disburse at least 90 percent of the amount of each donation for which a tax credit may be received under this article within one year of such donation for qualified educational expenses through scholarships to eligible students. Tax-credit-derived funds not used for such scholarships may only be used for the administrative expenses of the scholarship foundation. Any scholarship foundation that fails to disburse at least 90 percent of any donated amount within one year shall be removed from the annual list published pursuant to this section and shall not be entitled to request preauthorization for additional tax credits, nor shall it be entitled to receive and administer additional tax-credit-derived funds.

B. By September 30 of each year, the scholarship foundation shall provide the following information to the Department of Education: (i) the total number and dollar amount of contributions received between September 1 of the prior calendar year and September 1 of the current calendar year, (ii) the dates when such contributions were received, and (iii) the total number and dollar amount of qualified educational expenses scholarships awarded for the school year that began during the current calendar year. Any scholarship foundation that fails to provide this report by September 30 shall be removed from the annual list published pursuant to this section and shall not be entitled to request preauthorization for additional tax credits, nor shall it be entitled to receive and administer additional tax-credit-derived funds.

C. In awarding scholarships from tax-credit-derived funds, the scholarship foundation shall (i) 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

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59 disability, (ii) not limit scholarships to students of one school, and (iii) comply with Title VI of the
60 Civil Rights Act of 1964, as amended. Payment of scholarships from tax-credit-derived funds by the
61 eligible scholarship foundation shall be by individual warrant or check made payable to and mailed to
62 the eligible school that the student's parent or legal guardian indicates. In mailing such scholarship
63 payments, the eligible scholarship foundation shall include a written notice to the eligible school that the
64 source of the scholarship was donations made by persons receiving tax credits for the same pursuant to
65 this article.

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

75 Eligible schools shall ~~compile the results of any~~ administer national norm-referenced achievement test
76 for each of its tests to all students receiving tax-credit-derived scholarships and shall provide the
77 respective parents or legal guardians of such students with a copy of the results on an annual basis,
78 beginning with the first year of testing of the student. Such schools also shall annually provide to the
79 Department of Education for each such student *applicable scholarship foundation* the achievement test
80 results *for such students*, beginning with the first year of testing of the student; and student information
81 that would allow the Department to aggregate the achievement test results by grade level, gender, family
82 income level, number of years of participation in the scholarship program, and race. Beginning with the
83 third year of testing of each such student and test-related data collection, the Department of Education
84 shall ensure that the achievement test results and associated learning gains are published on the
85 Department of Education's website in accordance with such classifications and in an aggregate form as
86 to prevent the identification of any student. Eligible schools shall annually provide to the Superintendent
87 of Public Instruction graduation rates of its students participating in the scholarship program in a manner
88 consistent with nationally recognized standards. In publishing and disseminating achievement test results
89 and other information, the Superintendent of Public Instruction and the Department of Education shall
90 ensure compliance with all student privacy laws.

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

96 F. Scholarship foundations shall develop procedures for disbursing scholarships in quarterly payments
97 throughout the school year to ensure scholarships are portable.

98 G. An annual audit, review, or compilation as required by OMB Circular No. A-133 as may be
99 applicable to nonprofit organizations shall be conducted on a scholarship foundation's tax-credit-derived
100 funds. A summary report of the audit, review, or compilation shall be made available to the public and
101 the Department of Education upon request. The report shall include (i) the total number and dollar
102 amount of donations per locality received during the previous calendar year; (ii) the total number and
103 dollar amount of qualified educational expenses scholarships awarded during the previous calendar year
104 to every (a) student whose family's annual household income was not in excess of 300 percent of the
105 current poverty guidelines or (b) eligible student with a disability; and (iii) the percentage of first-time
106 recipients of qualified educational expenses scholarships.

107 H. The Department of Education shall publish annually on its website a list of each scholarship
108 foundation qualified under this article. Once a foundation has been qualified by the Department of
109 Education, it shall remain qualified until the Department removes the foundation from its annual list.
110 The Department of Education shall remove a foundation from the annual list if it no longer meets the
111 requirements of this article. The Department of Education may periodically require a qualified
112 foundation to submit updated or additional information for purposes of determining whether or not the
113 foundation continues to meet the requirements of this article.

114 I. Actions of the Superintendent of Public Instruction or the Department of Education relating to the
115 awarding of tax credits under this article and the qualification of scholarship foundations shall be exempt
116 from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.). Decisions of the
117 Superintendent of Public Instruction or the Department of Education shall be final and not subject to
118 review or appeal.