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SENATE BILL NO. 589

Offered January 13, 2016

Prefiled January 13, 2016

A *BILL to amend and reenact § 58.1-439.28 of the Code of Virginia, relating to the education improvement scholarship tax credit program; disbursement of donations.*

Patron—Obenshain

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:**1. That § 58.1-439.28 of the Code of Virginia is amended and reenacted as follows:****§ 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 an amount at least equal to 90 percent of the value of the donations it receives (for which tax credits were issued under this article) during each 12-month period ending on June 30 by the *June 30 of the third year* immediately following ~~June 30 the end of the 12-month period~~ 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 the appropriate ~~one-year~~ *three-year* period shall, for the first offense, be required to pay a civil penalty equal to 200 percent of the difference between 90 percent of the donated amount and the amount that was actually disbursed. Such civil penalty shall be remitted by the scholarship foundation to the Department of Education within 30 days after the end of the ~~one-year~~ *three-year* period and deposited to the general fund. For a second offense within a five-year period, the scholarship foundation 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 for two years. After two years, the scholarship foundation shall be eligible to reapply to be included on the annual list to receive and administer tax-credit derived funds. If a scholarship foundation is authorized to be added to the annual list after such reapplication, the scholarship foundation shall not be considered to have any previous offenses for purposes of this subsection. The required disbursement under this section shall begin with donations received for the period January 1, 2013, through June 30, 2014.

B. By September 30 of each year beginning in ~~2014~~ *2016*, the scholarship foundation shall provide the following information to the Department of Education: (i) the total number and value of ~~contributions~~ *donations* received by the foundation ~~in its most recent fiscal year ended during the 12-month period ending on the June 30 three years prior to the report~~ for which tax credits were issued by the Superintendent of Public Instruction, (ii) the dates when such contributions were received, and (iii) the total number and dollar amount of qualified educational expenses scholarships disbursed by the scholarship foundation during ~~its most recent~~ *the fiscal year ended that is the subject of the report and the immediately following 36 months*. Any scholarship foundation that fails to provide this report by September 30 shall, for the first offense, be required to pay a \$1,000 civil penalty. Such civil penalty shall be remitted by the scholarship foundation to the Department of Education by November 1 of the same year and deposited to the general fund. For a second offense within a five-year period, the scholarship foundation 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. After two years, the scholarship foundation shall be eligible to reapply to be included on the annual list to receive and administer tax-credit derived funds. If a scholarship foundation is authorized to be added to the annual list after such reapplication, the scholarship foundation shall not be considered to have any previous offenses for purposes of this subsection.

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 disability, (ii) not limit scholarships to students of one school, and (iii) comply with Title VI of the Civil Rights Act of 1964, as amended. Payment of scholarships from tax-credit-derived funds by the eligible scholarship foundation shall be by individual warrant or check made payable to and mailed to the eligible school that the student's parent or legal guardian indicates. In mailing such scholarship

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59 payments, the eligible scholarship foundation shall include a written notice to the eligible school that the
60 source of the scholarship was donations made by persons receiving tax credits for the same pursuant to
61 this article.

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

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

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

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

93 G. Scholarship foundations that receive donations of marketable securities for which tax credits were
94 issued under this article shall be required to sell such securities and convert the donation into cash
95 immediately, but in no case more than 14 days after receipt of the donation.

96 H. Each scholarship foundation with total revenues (including the value of all donations) (i) in excess
97 of \$100,000 for the foundation's most recent year ended shall have an audit or review performed by an
98 independent certified public accountant of the foundation's donations received in such year for which tax
99 credits were issued under this article, or (ii) of \$100,000 or less for the foundation's most recent year
100 ended shall have a compilation performed by an independent certified public accountant of the
101 foundation's donations received in such year for which tax credits were issued under this article. A
102 summary report of the audit, review, or compilation shall be made available to the public and the
103 Department of Education upon request. As an appendix to the report, the scholarship foundation's board
104 of directors shall certify (a) the total number and value of donations per locality received during the
105 foundation's most recent year ended; (b) the total number and dollar amount of qualified educational
106 expenses scholarships disbursed during the foundation's most recent year ended to every (1) student
107 whose family's annual household income was not in excess of 300 percent of the current poverty
108 guidelines or (2) eligible student with a disability; and (c) the percentage of first-time recipients to
109 whom qualified educational expenses scholarships were disbursed in the foundation's most recent year
110 ended.

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

118 J. Actions of the Superintendent of Public Instruction or the Department of Education relating to the
119 awarding of tax credits under this article and the qualification of scholarship foundations shall be exempt
120 from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.). Decisions of the

121 Superintendent of Public Instruction or the Department of Education shall be final and not subject to
122 review or appeal.

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