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HOUSE BILL NO. 1078

Offered January 10, 2018

Prefiled January 10, 2018

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 credits; limits eligibility to pre-kindergarten students.

Patron—Head

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 pre-kindergarten child" means a child who is (i) a resident of Virginia, (ii) an at-risk four-year-old unserved by Head Start programs, and (iii) admitted to, enrolled in, or attending a nonpublic pre-kindergarten program and whose family (a) does not have an annual household income in excess of 300 percent of the current poverty guidelines or 400 percent of such guidelines in cases in which an individualized education program has been written and finalized for the child in accordance with the federal Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et seq.), regulations promulgated pursuant to IDEA, and regulations of the Board of Education; (b) is homeless as defined in 42 U.S.C. § 11302; or (c) includes a parent or guardian of the child who did not graduate from high school.

"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) 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.

"Nonpublic pre-kindergarten program" means a pre-kindergarten program that is not operated or funded, directly or indirectly, by a federal, state, or local government entity and that is (i) a preschool program designed for child development and kindergarten preparation that complies with nonpublic school accreditation requirements administered by the Virginia Council for Private Education pursuant to § 22.1-19; (ii) participating in Virginia Quality with a current designation of at least Level 3 under such quality rating system; or (iii) a child day center, as defined in § 63.2-100, that is licensed by the Department of Social Services pursuant to Subtitle IV (§ 63.2-1700 et seq.) of Title 63.2 and implements a curriculum, professional development program, and coaching model developed and endorsed by a baccalaureate public institution of higher education, as defined in § 23.1-100.

"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.

"Student" means a child who is a resident of Virginia, whose family's annual household income is not in excess of 300 percent of the current poverty guidelines, and (i) in the current school year has enrolled and attended a public school in the Commonwealth for at least one-half of the year, (ii) for the school year that immediately preceded his receipt of a scholarship foundation scholarship was enrolled and attended a public school in the Commonwealth for at least one-half of the year, (iii) is a prior recipient of a scholarship foundation scholarship, (iv) is eligible to enter kindergarten or first grade, or (v) for the school year that immediately preceded his receipt of a scholarship foundation scholarship was domiciled in a state other than the Commonwealth and did not attend a nonpublic school in the Commonwealth for more than one-half of the school year. "Student" does not include an eligible pre-kindergarten child. On and after June 30, 2018, "student" means a child who (a) received a scholarship foundation scholarship for the scholarship year beginning June 30, 2017, and each year thereafter, and (b) otherwise meets the requirements of this definition.

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59 "Virginia Quality" means a quality rating and improvement system for early childhood programs  
 60 administered in partnership between the Virginia Early Childhood Foundation and the Office of Early  
 61 Childhood Development of the Department of Social Services.

62 **§ 58.1-439.28. Guidelines for scholarship foundations.**

63 A. As a condition for qualification by the Department of Education, a scholarship foundation, as  
 64 defined in § 58.1-439.25 and included on the list published annually by the Department of Education  
 65 pursuant to this section, shall disburse an amount at least equal to 90 percent of the value of the  
 66 donations it receives (for which tax credits were issued under this article) during each 12-month period  
 67 ending on June 30 by the immediately following June 30 for qualified educational expenses through  
 68 scholarships to (i) eligible students and (ii) on and after June 30, 2018, students and eligible  
 69 pre-kindergarten children. Tax-credit-derived funds not used for such scholarships may only be used for  
 70 the administrative expenses of the scholarship foundation. Any scholarship foundation that fails to meet  
 71 such disbursement requirement shall, for the first offense, be required to pay a civil penalty equal to 200  
 72 percent of the difference between 90 percent of the value of the tax-credit-derived donations it received  
 73 in the applicable 12-month period and the amount that was actually disbursed. Such civil penalty shall  
 74 be remitted by the scholarship foundation to the Department of Education within 30 days after the end  
 75 of the one-year period and deposited to the general fund. For a second offense within a five-year period,  
 76 the scholarship foundation shall be removed from the annual list published pursuant to this section and  
 77 shall not be entitled to request preauthorization for additional tax credits, nor shall it be entitled to  
 78 receive and administer additional tax-credit-derived funds for two years. After two years, the scholarship  
 79 foundation shall be eligible to reapply to be included on the annual list to receive and administer  
 80 tax-credit derived funds. If a scholarship foundation is authorized to be added to the annual list after  
 81 such reapplication, the scholarship foundation shall not be considered to have any previous offenses for  
 82 purposes of this subsection. The required disbursement under this section shall begin with donations  
 83 received for the period January 1, 2013, through June 30, 2014.

84 B. By September 30 of each year beginning in 2016, the scholarship foundation shall provide the  
 85 following information to the Department of Education: (i) the total number and value of donations  
 86 received by the foundation during the 12-month period ending on June 30 of the prior calendar year for  
 87 which tax credits were issued by the Superintendent of Public Instruction, (ii) the dates when such  
 88 donations were received, and (iii) the total number and dollar amount of qualified educational expenses  
 89 scholarships awarded from tax-credit-derived donations and disbursed by the scholarship foundation  
 90 during the 24-month period ending on June 30 of the current calendar year. Any scholarship foundation  
 91 that fails to provide this report by September 30 shall, for the first offense, be required to pay a \$1,000  
 92 civil penalty. Such civil penalty shall be remitted by the scholarship foundation to the Department of  
 93 Education by November 1 of the same year and deposited to the general fund. For a second offense  
 94 within a five-year period, the scholarship foundation shall be removed from the annual list published  
 95 pursuant to this section and shall not be entitled to request preauthorization for additional tax credits,  
 96 nor shall it be entitled to receive and administer additional tax-credit-derived funds. After two years, the  
 97 scholarship foundation shall be eligible to reapply to be included on the annual list to receive and  
 98 administer tax-credit derived funds. If a scholarship foundation is authorized to be added to the annual  
 99 list after such reapplication, the scholarship foundation shall not be considered to have any previous  
 100 offenses for purposes of this subsection.

101 C. In awarding scholarships from tax-credit-derived funds, the scholarship foundation shall ~~(i)~~  
 102 provide scholarships for qualified educational expenses only to (i) students whose family's annual  
 103 household income is not in excess of 300 percent of the current poverty guidelines or eligible students  
 104 with a disability; and (ii) on and after June 30, 2018, students and eligible pre-kindergarten children.  
 105 The scholarship foundation shall not limit scholarships to students of one school; and ~~(iii)~~ shall comply  
 106 with Title VI of the Civil Rights Act of 1964, as amended. Payment of scholarships from  
 107 tax-credit-derived funds by the eligible scholarship foundation shall be by individual warrant or check  
 108 made payable to and mailed to the eligible school that the student's or eligible pre-kindergarten child's  
 109 parent or legal guardian indicates. In mailing such scholarship payments, the eligible scholarship  
 110 foundation shall include a written notice to the eligible school that the source of the scholarship was  
 111 donations made by persons receiving tax credits for the same pursuant to this article.

112 D. 1. Scholarship foundations shall ensure that schools selected by students or eligible  
 113 pre-kindergarten children to which tax-credit-derived funds may be paid (i) are in compliance with the  
 114 Commonwealth's and locality's health and safety laws and codes; (ii) hold a valid occupancy permit as  
 115 required by the locality; (iii) comply with Title VI of the Civil Rights Act of 1964, as amended; and  
 116 (iv) are (a) for students in grades K through 12, nonpublic schools that comply with nonpublic school  
 117 accreditation requirements as set forth in § 22.1-19 and administered by the Virginia Council for Private  
 118 Education or nonpublic schools that maintain an assessment system that annually measures scholarship  
 119 students' progress in reading and math using a national norm-referenced achievement test, including but  
 120 not limited to the Stanford Achievement Test, California Achievement Test, and Iowa Test of Basic

121 Skills, and (b) for eligible pre-kindergarten children, nonpublic pre-kindergarten programs.

122 2. Each nonpublic pre-kindergarten program shall (i) provide to the eligible pre-kindergarten child a  
123 curriculum that is aligned with Virginia's Foundation Blocks for Early Learning: Comprehensive  
124 Standards for Four-Year-Olds as published by the Department of Education, or any successor standards  
125 published by the Department of Education; (ii) have maximum class sizes of 20 students with a  
126 teacher-student ratio of not fewer than two teachers for every 20 students; (iii) provide at least half-day  
127 services and operate for at least the school year; (iv) agree to provide the Department of Education  
128 with student information for each eligible pre-kindergarten child receiving a scholarship foundation  
129 scholarship for purposes of allowing the Department of Education to conduct studies comparing the  
130 academic performance of such children while attending primary or secondary school with other children  
131 attending primary or secondary school who have attended a pre-kindergarten program, including  
132 programs funded under the Virginia Preschool Initiative; and (v) require professional development of  
133 program teachers which enables such teachers to engage in high-quality instruction in accordance with  
134 the curriculum described under clause (i). Each nonpublic pre-kindergarten program teacher at a  
135 minimum shall have earned a certificate from a nationally recognized early childhood education  
136 certificate program, including any early childhood education certificate program provided or sponsored  
137 by the System, as defined in § 23.1-100.

138 In awarding scholarships to eligible pre-kindergarten children, scholarship foundations shall award  
139 scholarships from tax-credit-derived funds only to such children who are enrolled in or attending  
140 nonpublic pre-kindergarten programs that meet the conditions of this subdivision as certified by the  
141 Virginia Council for Private Education or the Virginia Early Childhood Foundation.

142 3. Eligible schools shall compile the results of any national norm-referenced achievement test for  
143 each of its students receiving tax-credit-derived scholarships and shall provide the respective parents or  
144 legal guardians of such students with a copy of the results on an annual basis, beginning with the first  
145 year of testing of the student. Such schools also shall annually provide to the Department of Education  
146 for each such student the achievement test results, beginning with the first year of testing of the student,  
147 and student information that would allow the Department to aggregate the achievement test results by  
148 grade level, gender, family income level, number of years of participation in the scholarship program,  
149 and race. Beginning with the third year of testing of each such student and test-related data collection,  
150 the Department of Education shall ensure that the achievement test results and associated learning gains  
151 are published on the Department of Education's website in accordance with such classifications and in an  
152 aggregate form as to prevent the identification of any student. Eligible schools shall annually provide to  
153 the Superintendent of Public Instruction graduation rates of its students participating in the scholarship  
154 program in a manner consistent with nationally recognized standards. In publishing and disseminating  
155 achievement test results and other information, the Superintendent of Public Instruction and the  
156 Department of Education shall ensure compliance with all student privacy laws. *The provisions of this  
157 subdivision shall not apply to eligible pre-kindergarten children.*

158 E. 1. The aggregate amount of scholarships provided to each student for any single school year by  
159 all eligible scholarship foundations from eligible donations shall not exceed the lesser of (i) the actual  
160 qualified educational expenses of the student or (ii) 100 percent of the per-pupil amount distributed to  
161 the local school division (in which the student resides) as the state's share of the standards of quality  
162 costs using the composite index of ability to pay as defined in the general appropriation act.

163 2. In the case of eligible pre-kindergarten children, the aggregate amount of scholarships provided to  
164 each child for any single school year by all eligible scholarship foundations from eligible donations  
165 shall not exceed the lesser of (i) the actual qualified educational expenses of the child or (ii) the state  
166 share of the grant per child under the Virginia Preschool Initiative for the locality in which the eligible  
167 pre-kindergarten child resides.

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

170 G. Scholarship foundations that receive donations of marketable securities for which tax credits were  
171 issued under this article shall be required to sell such securities and convert the donation into cash  
172 immediately, but in no case more than 21 days after receipt of the donation.

173 H. Each scholarship foundation with total revenues (including the value of all donations) (i) in excess  
174 of \$100,000 for the foundation's most recent fiscal year ended shall have an audit or review performed  
175 by an independent certified public accountant of the foundation's donations received in such year for  
176 which tax credits were issued under this article or (ii) of \$100,000 or less for the foundation's most  
177 recent fiscal year ended shall have a compilation performed by an independent certified public  
178 accountant of the foundation's donations received in such year for which tax credits were issued under  
179 this article. A summary report of the audit, review, or compilation shall be made available to the public  
180 and the Department of Education upon request.

181 I. The Department of Education shall publish annually on its website a list of each scholarship

182 foundation qualified under this article. Once a foundation has been qualified by the Department of  
183 Education, it shall remain qualified until the Department removes the foundation from its annual list.  
184 The Department of Education shall remove a foundation from the annual list if it no longer meets the  
185 requirements of this article. The Department of Education may periodically require a qualified  
186 foundation to submit updated or additional information for purposes of determining whether or not the  
187 foundation continues to meet the requirements of this article.

188 J. Actions of the Superintendent of Public Instruction or the Department of Education relating to the  
189 awarding of tax credits under this article and the qualification of scholarship foundations shall be exempt  
190 from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.). Decisions of the  
191 Superintendent of Public Instruction or the Department of Education shall be final and not subject to  
192 review or appeal.