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## HOUSE BILL NO. 2238

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Appropriations  
on February 6, 2015)

(Patron Prior to Substitute—Delegate LaRock)

A BILL to amend the Code of Virginia by adding in Chapter 13 of Title 22.1 an article numbered 2.1, consisting of sections numbered 22.1-222.1 through 22.1-222.4, relating to Parental Choice Education Savings Accounts.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 13 of Title 22.1 an article numbered 2.1, consisting of sections numbered 22.1-222.1 through 22.1-222.4, as follows:

## Article 2.1.

## Parental Choice Education Savings Accounts.

## § 22.1-222.1. Definitions.

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

"Department" means the Virginia Department of Education.

"Domicile" has the same meaning as provided in § 58.1-302.

"Eligible institution" means a public two-year or four-year institution of higher education or an accredited private institution of higher education in the Commonwealth.

"Parent" means a parent, as defined in § 22.1-1, who has established domicile in the Commonwealth.

"Parental Choice Education Savings Account" or "Savings Account" means a private bank account in the name of and controlled by a parent and into which only funds from the Commonwealth may be deposited as provided in subsections D and E of § 22.1-222.2.

"Plan" means the Virginia College Savings Plan.

"Private Scholarship Foundation" means a nonstock, nonprofit corporation that complies with all relevant requirements regarding solicitation of contributions in Chapter 5 (§ 57-48 et seq.) of Title 57 and whose articles of incorporation, governing rules, or equivalent documents, such as its bylaws, as originally established or legally and validly amended, state that one of its purposes is to provide principal aid for the education of students residing in the Commonwealth.

"Resident school division" means the school division in which a qualified student resides.

"Qualified school" means a private, sectarian or nonsectarian elementary or secondary school or preschool for students that is located in the Commonwealth and does not discriminate on the basis of race, color, or national origin.

"Qualified student" means a resident of the Commonwealth to whom public schools shall be free pursuant to § 22.1-3 and who:

1. is identified as having a disability and is receiving or is eligible to receive services from a school division pursuant to § 22.1-214 and

2. (i) was enrolled at and attended a public elementary or secondary school or preschool in the Commonwealth for at least half of the school year immediately preceding his parent's application for a Virginia Parental Choice Education Savings Account; (ii) was domiciled in a state other than the Commonwealth during the school year immediately preceding his parent's application for a Virginia Parental Choice Education Savings Account and did not attend a private elementary or secondary school or preschool in the Commonwealth for more than half of such school year; or (iii) while enrolled at and attending a qualified school during the school year immediately preceding his parent's application for a Virginia Parental Choice Education Savings Account, received a scholarship from a scholarship foundation, as that term is defined in § 58.1-439.25.

§ 22.1-222.2. Virginia Parental Choice Education Savings Accounts established; application; agreement; disbursement.

A. Virginia Parental Choice Education Savings Accounts are established to provide the parent of a qualified student with options for the education of his child.

B. The parent of a qualified student may apply to the resident school division by April 1 of the immediately preceding school year for a Savings Account that is renewable annually. The application and renewal process shall include a requirement for such parent to annually sign a written agreement to:

1. Provide an education for the qualified student as required by § 22.1-254;

2. Not enroll the qualified student in a school division for the school year in which the parent receives the Savings Account or the immediately succeeding school year;

3. Release the school division in which the qualified student resides from all obligations to educate the qualified student;

60 4. Not accept a scholarship from a scholarship foundation, as that term is defined in § 58.1-439.25,  
61 that received a donation from a person who is eligible to earn a credit for such donation pursuant to  
62 Article 13.3 (§ 58.1-439.25 et seq.) of Chapter 3 of Title 58.1 concurrently with receipt of a Savings  
63 Account;

64 5. Use the moneys deposited in the Savings Account solely for one or more of the following expenses  
65 of the qualified student pursuant to § 22.1-214, including: (i) tuition, fees, or required textbooks at a  
66 qualified school; (ii) educational therapies or services for the qualified student from a practitioner or  
67 provider, including paraprofessionals or educational aides; (iii) tutoring services; (iv) curriculum; (v)  
68 tuition or fees for a private online learning program; (vi) fees for a nationally standardized  
69 norm-referenced achievement test, an Advanced Placement examination, or any examination taken to  
70 gain admission to an institution of higher education; (vii) tuition fees or required textbooks at an  
71 eligible institution; (viii) fees for management of the Savings Account by firms selected by the Plan  
72 pursuant to subsection A of § 22.1-222.3; (ix) services that are offered on a fee-for-service basis by a  
73 public elementary or secondary school or preschool to the public, including classes and extracurricular  
74 activities; (x) such insurance or surety bond payments as may be required by the Plan; or (xi)  
75 transportation, consumable educational supplies, or any other goods or services that are necessary for  
76 the provision of the qualified student's education pursuant to § 22.1-254;

77 6. Submit an expense summary and all applicable invoices and receipts to the Plan for the preceding  
78 school year no later than July 15 and prior to receiving a Savings Account disbursement for the  
79 subsequent year; and

80 7. Submit to periodic audits of the Savings Account by the Plan as provided in subsection C of  
81 § 22.1-222.3.

82 C. The resident school division shall give written notice to any parent applying for or requesting  
83 renewal of a Savings Account as to the disposition of the application or renewal request no later than  
84 the May 15 immediately succeeding the application or renewal request date. The resident school division  
85 may send the parent a written notice requesting additional information, if needed, to determine the final  
86 disposition of the application or renewal request. Such parent shall submit the requested information to  
87 the resident school division within 14 calendar days from the date of the receiving such written notice  
88 from the resident school division. If the requested information is not received within such time, the  
89 resident school division shall deny the application or renewal request. In the event that the resident  
90 school division denies any application or renewal request, the parent may appeal such denial to the  
91 school board in the resident school division and such school board shall hear and take action on such  
92 appeal within 45 calendar days of receipt of the appeal. In the event that the school board denies such  
93 appeal, the parent may appeal such denial and the Board shall hear and take action on such appeal  
94 within 60 calendar days of receipt of the appeal.

95 D. The resident school division shall disburse to each parent, including each parent who elects to  
96 withdraw his child from a public school in the Commonwealth after such student has attended such  
97 school for at least one-half of the immediately preceding school year, whose application or renewal is  
98 granted by the resident school division and who signs a written agreement pursuant to subsection B  
99 state funds for deposit into a Savings Account in an amount that is equivalent to 90 percent of (i) all  
100 applicable Standards of Quality per pupil state funds appropriated for public school purposes and  
101 apportioned to the school division in which the qualified student resides, including the per pupil share  
102 of state sales tax funding in basic aid and (ii) the Standards of Quality special education per pupil  
103 amount funded by the Commonwealth for which the qualified student would qualify in the school  
104 division in which he resides.

105 E. No resident school division shall transfer the local share of per pupil funds or any portion thereof  
106 to a Savings Account.

107 F. Each qualified student whose parent has applied for and received a Savings Account shall be  
108 counted in the March 31 average daily membership or fall membership of the resident school division  
109 and shall be identified as such for the sole purpose of the resident school division's calculation of the  
110 state share to be transferred to the Savings Account and not for any other purpose such as calculating  
111 the state share of costs for other program accounts. No such student shall not be counted in the resident  
112 school division's required effort to meet actual need for required matching local funds as prescribed by  
113 the Standards of Quality or any other initiative supported by the Commonwealth that requires a local  
114 match of funds.

115 G. The state share of all applicable Standards of Quality per pupil funding transferred from a  
116 resident school division to a Savings Account shall be based on the qualified student's March 31  
117 average daily membership. The Department shall determine the state share per pupil funding for a  
118 qualified student based on the general appropriation act that is current as of July 1 and the resident  
119 school division shall annually make warrant for and deposit such amount directly into the relevant  
120 Savings Account. Such state share per pupil funding shall be based on the Standards of Quality per  
121 pupil funding enacted in the current general appropriation act.

H. No later than November 1 of each year, each division superintendent shall certify and report to the Superintendent of Public Instruction the number of students in the resident school division whose parents have received a Savings Account and the amount of funds transferred to each such Savings Account. No later than December 15 of each year, The Superintendent of Public Instruction shall report to the Governor and the chairmen of the House Committee on Appropriations and Senate Committee on Finance the name of each school division in which the parent of a qualified student has received a Savings Account, the number of qualified students whose parents have received a Savings Account, and the total state funding transferred to such Savings Accounts.

I. Each parent who receives a Savings Account shall submit all applicable receipts and invoices necessary to account for funds spent from such Account to the resident school division for review and possible audit. Each resident school division shall determine, based on the policies established by the Department pursuant to subsection F of § 22.1-222.3, the appropriateness of the submitted receipts and invoices prior to consideration for a sequent renewal request.

J. No entity that receives moneys from a Savings Account may refund, rebate, or otherwise remit any such moneys to the parent or qualified student.

K. Upon the qualified student's graduation from an eligible institution or after the first four consecutive years following the qualified student's graduation from high school during which the student is not enrolled at an eligible institution, the Savings Account shall be closed and any remaining funds shall be returned to the Commonwealth.

L. Moneys received by a parent in a Savings Account pursuant to this article do not constitute taxable income to the parent.

**§ 22.1-222.3. Administration; audit; rules.**

A. The Department, in consultant with the Plan, shall establish a process for application, renewal, and appeal pursuant to subsections B and C § 22.1-222.2.

B. The Plan may contract, directly or indirectly, through Private Scholarship Foundations or with private financial management firms to manage Savings Accounts under the supervision of the Plan.

C. The Plan shall conduct or contract for annual audits of Savings Accounts to ensure compliance with subdivisions B 4 and B 5 of § 22.1-222.2.

D. Upon receiving the results of an audit pursuant to subsection B and finding that a parent committed a misrepresentation or any other material violation of the agreement pursuant to subsection B of § 22.1-222.2 or any other provision of this article, the resident school division may rescind the agreement and declare such parent ineligible for renewal of the Savings Account. The parent may appeal such decision to the local school board. If the appeal to the local school board is unsuccessful, the parent may appeal the local school board's decision to the Board.

E. The resident school division may refer to the Board and the Office of State Inspector General for investigation any case in which it finds evidence of fraudulent use of Savings Account moneys by a parent. If any expenditure is determined to be invalid or not permitted, the parent shall be required to reimburse the resident school division for such expense and the resident school division shall withhold any future disbursement to such Virginia Parental Choice Education Savings Account until such time as the parent has made such reimbursement.

F. Each resident school division shall adopt the policies established by the Department that are necessary for the implementation of this article, including policies for conducting audits, conducting appeals, preventing fraud, and requiring surety bond for Savings Account holders if necessary.

**§ 22.1-222.4. Scope of article.**

A. Nothing in this article shall be construed to permit any agency of the Commonwealth to exercise control or supervision over any private school or program of home instruction.

B. No qualified school that receives moneys from a Savings Account pursuant to this article shall be considered an agent of the state or federal government.

C. No qualified school shall be required to alter its creed, practices, admissions policies, or curriculum in order to receive moneys from a Savings Account pursuant to this article.

D. In any legal proceeding challenging the application of this article to a qualified school, the Commonwealth bears the burden of establishing that the law is necessary and does not impose any undue burden on the qualified school.

E. If any expense of a qualified student set forth in subdivision B 5 of § 22.1-222.2 is held to be invalid, such holding shall not affect the validity of any other expense of a qualified student set forth in such subdivision.