

15100515D

**SENATE BILL NO. 905**

Offered January 14, 2015

Prefiled January 7, 2015

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

Patron—Howell

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 immediately following June 30 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 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 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, the scholarship foundation shall provide the following information to the Department of Education: (i) the total number and value of contributions received by the foundation in its most recent fiscal year ended 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 fiscal year ended. 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 payments, the eligible scholarship foundation shall include a written notice to the eligible school that the source of the scholarship was donations made by persons receiving tax credits for the same pursuant to this article.

INTRODUCED

SB905

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

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

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

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

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

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

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

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