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HOUSE BILL NO. 2431

Offered January 18, 2023

A BILL to amend and reenact §§ 58.1-439.20, 58.1-439.25, as it shall become effective, 58.1-439.26, and 58.1-439.28, as it shall become effective, of the Code of Virginia and the second enactment of Chapter 808 of the Acts of Assembly of 2019, relating to income tax credits; Neighborhood Assistance Act; Education Improvement Scholarships.

Patron—Morefield

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-439.20, 58.1-439.25, as it shall become effective, 58.1-439.26, and 58.1-439.28, as it shall become effective, of the Code of Virginia are amended and reenacted as follows:

§ 58.1-439.20. Proposals to the State Board of Social Services; regulations; tax credits authorized.

A. Any neighborhood organization may submit a proposal, other than education proposals which shall be applied for and allocated pursuant to the provisions of § 58.1-439.20:1, to the Commissioner of Social Services requesting an allocation of tax credits for use by business firms making donations to the neighborhood organization.

The proposal shall set forth the program to be conducted by the neighborhood organization, the low-income persons to be assisted, the estimated amount to be donated to the program, and the plans for implementing the program.

B. 1. The State Board of Social Services is hereby authorized to adopt regulations for the approval or disapproval of such proposals by neighborhood organizations and for determining the value of the donations.

2. In order to be eligible to receive an allocation of tax credits pursuant to this article, a neighborhood organization shall have been in existence for at least one year. As a prerequisite for approval, neighborhood organizations with total revenues of (i) more than \$100,000 shall provide to the Commissioner of Social Services an audit or review for the most recent year or (ii) \$100,000 or less shall provide to the Commissioner of Social Services a compilation for the most recent year. Such audit, review, or compilation shall be performed by an independent certified public accountant. For purposes of this subdivision, "total revenues" means all revenues, including the value of all donations, for the organization's most recent year. No proposal for an allocation of tax credits shall be untimely filed solely because such audit, review, or compilation was not submitted by the neighborhood organization by the proposal filing deadline, provided that the audit, review, or compilation is submitted to the Commissioner of Social Services within the 30-day period immediately following such deadline.

3. In order to be eligible to receive an allocation of credits pursuant to this article, at least 50 percent of the persons served by the neighborhood organization shall be low-income persons, and at least 50 percent of the neighborhood organization's revenues shall be used to provide services to low-income persons.

4. In order for a proposal to be approved, an applicant neighborhood organization and any of its affiliates shall meet the requirements of this section and the application regulations.

However, beginning with tax credit allocations for fiscal year 2016-2017 and thereafter, such requirement for a proposal submitted by a neighborhood organization to the Commissioner of Social Services shall not apply in determining the eligibility of the neighborhood organization submitting a proposal, provided that (i) the neighborhood organization otherwise meets all statutory requirements and regulations, (ii) the neighborhood organization received a fiscal year 2013-2014 allocation of neighborhood assistance tax credits, and (iii) no affiliate of the neighborhood organization submits a proposal for or receives an allocation of tax credits pursuant to this article for the program year for which the neighborhood organization has submitted its proposal.

5. The regulations shall provide for the equitable allocation of the available amount of tax credits among the approved proposals submitted by neighborhood organizations. *In making such equitable allocation of credits, the Commissioner of Social Services shall consider the portion of a neighborhood organization's revenues and expenses that are used to serve low-income persons and shall not rely solely on the amount of credits allocated to the neighborhood organization in the prior year in allocating available credits.* In allocating credits, the Commissioner of Social Services ~~or the Superintendent of Public Instruction~~ shall consider the past performance of neighborhood organizations that have received allocations of credits, including review of performance metrics, success in reaching

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59 targeted goals, or other measures of accountability that may be established by regulations or guidelines.

60 6. The regulations or guidelines shall provide that in any year in which the available amount of tax
61 credits exceeds the previous year's available amount, at least 10 percent of the excess amount shall be
62 allocated to qualified programs proposed by neighborhood organizations that did not receive any
63 allocations in the preceding year. If the amount of tax credits requested by such neighborhood
64 organizations is less than 10 percent of the excess amount, the unallocated portion of such 10 percent
65 shall be allocated to qualified programs proposed by other neighborhood organizations.

66 C. 1. If the Commissioner of Social Services approves a proposal submitted by a neighborhood
67 organization, the organization shall make the allocated tax credit amounts available to business firms
68 making donations to the approved program. A neighborhood organization shall not assign or transfer an
69 allocation of tax credits to another neighborhood organization without the approval of the Commissioner
70 of Social Services.

71 2. Notwithstanding any other provision of law, no more than an aggregate of \$0.5 million in tax
72 credits shall be approved in a fiscal year to a neighborhood organization or to a grouping of
73 neighborhood organization affiliates for all other proposals combined.

74 3. If, after the initial allocation of credits to approved proposals, the State Department of Social
75 Services has a balance of tax credits remaining for the fiscal year that can be used or allocated by a
76 neighborhood organization for a proposal that had been approved for tax credits during the initial
77 allocation, then the Commissioner of Social Services shall reallocate the remaining balance of tax credits
78 to such previously approved proposals to the extent that a neighborhood organization can use or allocate
79 additional tax credits for the previously approved proposal. The \$0.5 million annual limitations for tax
80 credits approved to a grouping of neighborhood organization affiliates shall be inapplicable for such
81 reallocation of any balance of tax credits. The balance of tax credits remaining for reallocation shall
82 include the amount of any tax credits that have been granted for a proposal approved during the initial
83 allocation but for which the Commissioner of Social Services received notice from the neighborhood
84 organization that it will not be able to use or allocate such amount for the approved proposal.

85 D. The total amount of tax credits granted for programs approved by the Commissioner of Social
86 Services under this article for each fiscal year shall not exceed \$8 million for fiscal year 2015-2016 and
87 each fiscal year thereafter.

88 The Commissioner of Social Services shall work cooperatively with the Superintendent of Public
89 Instruction for purposes of ensuring that neighborhood organization proposals are submitted to the
90 proper state agency pursuant to this section and § 58.1-439.20:1. The Commissioner of Social Services
91 may request the assistance of the Department of Taxation for purposes of determining whether or not
92 anticipated donations for which tax credits are requested by a neighborhood organization likely qualify
93 as a charitable donation under federal tax laws and regulations.

94 E. Actions of the State Department of Social Services, or the Commissioner of the same, relating to
95 the review of neighborhood organization proposals and the allocation of tax credits to proposals shall be
96 exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.). Decisions of the
97 State Department of Social Services, or the Commissioner of the same, shall be final and not subject to
98 review or appeal.

99 **§ 58.1-439.25. (Applicable to taxable years beginning January 1, 2024) Definitions.**

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

101 "Eligible pre-kindergarten child" means a child who is (i) a resident of Virginia; (ii) an at-risk
102 four-year-old unable to obtain services through Head Start or Virginia Preschool Initiative programs; and
103 (iii) enrolled in, eligible to attend, or attending a nonpublic pre-kindergarten program and whose family
104 (a) does not have an annual household income in excess of 300 percent of the current poverty guidelines
105 or 400 percent of such guidelines in cases in which an individualized education program has been
106 written and finalized for the child in accordance with the federal Individuals with Disabilities Education
107 Act (IDEA), regulations promulgated pursuant to IDEA, and regulations of the Board of Education; (b)
108 is homeless as defined in 42 U.S.C. § 11302; or (c) includes a parent or guardian of the child who did
109 not graduate from high school, and whose parent or guardian certifies to the scholarship foundation that
110 the child was unable to obtain services through the Virginia Preschool Initiative in the public school
111 division in which the child resides.

112 "Eligible student with a disability" means a student (i) for whom an individualized educational
113 program has been written and finalized in accordance with the federal Individuals with Disabilities
114 Education Act (IDEA), regulations promulgated pursuant to IDEA, and regulations of the Board of
115 Education; (ii) whose family's annual household income is not in excess of 400 percent of the current
116 poverty guidelines; and (iii) who otherwise is a student as defined in this section.

117 "In-kind services donation" means a donation by a person licensed as a certified public accountant
118 of audit, review, compilation, or other accounting services to a scholarship foundation.

119 "Nonpublic pre-kindergarten program" means a pre-kindergarten program that is not operated, directly
120 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 *scholastic assistance* and 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 *scholastic assistance* or financial aid for the education of students residing in the Commonwealth.

"*Scholastic assistance*" means *counseling or supportive services provided to elementary or secondary school students or their parents in developing a postsecondary academic or vocational education plan, including college financing options for such students or their parents, provided by a scholarship foundation at a public school with which the foundation is under contract.*

"Student" means a child who is a resident of Virginia 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 eligible to enter 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.

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

§ 58.1-439.26. Tax credit for donations to certain scholarship foundations.

A. Notwithstanding the provisions of § 30-19.1:11, for taxable years beginning on or after January 1, 2013, but before January 1, 2028, a person shall be eligible to earn a credit against any tax due under Article 2 (§ 58.1-320 et seq.) or Article 10 (§ 58.1-400 et seq.), Chapter 12 (§ 58.1-1200 et seq.), Chapter 25 (§ 58.1-2500 et seq.), or Article 2 (§ 58.1-2620 et seq.) of Chapter 26 in an amount equal to 65 percent of the value of the monetary ~~or~~, marketable securities, *or in-kind services* donation made by the person to a scholarship foundation included on the list published annually by the Department of Education in accordance with the provisions of § 58.1-439.28.

No tax credit shall be allowed under this article if the value of the monetary ~~or~~, marketable securities, *or in-kind services* donation made by an individual is less than \$500. In addition, tax credits shall be issued only for the first \$125,000 in value of donations made by the individual during the taxable year. The maximum aggregate donations of \$125,000 for the taxable year for which tax credits may be issued and the minimum required donation of \$500 shall apply on an individual basis. Such limitation on the maximum amount of tax credits issued to an individual shall not apply to credits issued to any business entity, including a sole proprietorship.

B. Tax credits shall be issued to persons making monetary ~~or~~, marketable securities, *or in-kind services* donations to scholarship foundations by the Department of Education on a first-come, first-served basis in accordance with procedures established by the Department of Education under the following conditions:

1. The total amount of tax credits that may be issued each fiscal year under this article shall not exceed \$25 million.

2. The amount of the credit shall not exceed the person's tax liability pursuant to Article 2 (§ 58.1-320 et seq.) or Article 10 (§ 58.1-400 et seq.), Chapter 12 (§ 58.1-1200 et seq.), Chapter 25 (§ 58.1-2500 et seq.), or Article 2 (§ 58.1-2620 et seq.) of Chapter 26, as applicable, for the taxable year for which the credit is claimed. Any credit not usable for the taxable year for which first allowed may be carried over for credit against the taxes imposed upon the person pursuant to Article 2 (§ 58.1-320 et seq.) or Article 10 (§ 58.1-400 et seq.), Chapter 12 (§ 58.1-1200 et seq.), Chapter 25 (§ 58.1-2500 et

seq.), or Article 2 (§ 58.1-2620 et seq.) of Chapter 26, as applicable, in the next five succeeding taxable years or until the total amount of the tax credit has been taken, whichever is sooner.

The amount of any credit attributable to a partnership, electing small business corporation (S corporation), or limited liability company shall be allocated to the individual partners, shareholders, or members, respectively, in proportion to their ownership or interest in such business entities.

C. In a form approved by the Department of Education, ~~the~~ a person seeking to make a monetary or marketable securities, *or in-kind services* donation to a scholarship foundation or a scholarship foundation on behalf of such person shall request preauthorization for a specified tax credit amount from the Superintendent of Public Instruction. The Department of Education's preauthorization notice shall accompany the monetary or marketable securities, *or in-kind services* donation from the person to the scholarship foundation, which shall, within 40 days, return the notice to the Department of Education certifying the value and type of donation and date received. Upon receipt and approval by the Department of Education of the preauthorization notice with required supporting documentation and certification of the value and type of the donation by the scholarship foundation, the Superintendent of Public Instruction shall as soon as practicable, and in no case longer than 30 days, issue a tax credit certificate to the person eligible for the tax credit. The person shall attach the tax credit certificate to the applicable tax return filed with the Department of Taxation or the State Corporation Commission, as applicable. The Department of Education shall provide a copy of the tax credit certificate to the scholarship foundation.

Preauthorization notices not acted upon by a donor within 180 days of issuance shall be void. No tax credit shall be approved by the Department of Education for activities that are a part of a person's normal course of business.

In determining the value of an in-kind services donation, the Superintendent of Public Instruction shall consider the fair market value of the services rendered by the person, including the time spent by the person on audit, review, compilation, or other accounting services.

§ 58.1-439.28. (Applicable to taxable years beginning on and after January 1, 2024) 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 *scholastic assistance or* scholarships to eligible students. Tax-credit-derived funds not used for such *scholastic assistance and* scholarships may only be used for the administrative expenses of the scholarship foundation. Any scholarship foundation that fails to meet such disbursement requirement shall, for the first offense, be required to pay a civil penalty equal to the difference between 90 percent of the value of the tax-credit-derived donations it received in the applicable 12-month period 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 2016, the scholarship foundation shall provide the following information to the Department of Education: (i) the total number and value of donations received by the foundation during the 12-month period ending on June 30 of the prior calendar year for which tax credits were issued by the Superintendent of Public Instruction, (ii) the dates when such donations were received, and (iii) the total number and dollar amount of qualified educational expenses, *including scholastic assistance and* scholarships awarded from tax-credit-derived donations and disbursed by the scholarship foundation during the 24-month period ending on June 30 of the current calendar year. 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, eligible students with a disability, or eligible pre-kindergarten children; (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.

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

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

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

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

The provisions of this subdivision shall not apply to eligible pre-kindergarten children.

E. 1. The aggregate amount of scholarships provided to each student for any single school year by

all eligible scholarship foundations from eligible donations shall not exceed the lesser of (i) the actual qualified educational expenses of the student or (ii) 100 percent of the per-pupil amount distributed to the local school division (in which the student resides) as the state's share of the standards of quality costs using the composite index of ability to pay as defined in the general appropriation act.

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

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

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

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

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

J. Actions of the Superintendent of Public Instruction or the Department of Education relating to the awarding of tax credits under this article and the qualification of scholarship foundations shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.). Decisions of the Superintendent of Public Instruction or the Department of Education *with respect to the awarding of tax credits or the qualification of scholarship foundations* shall be final and not subject to review or appeal. ~~constitute a case decision, as defined in § 2.2-4001. Any taxpayer or scholarship foundation shall have a right to seek judicial review of the case decision in accordance with Article 5 (§ 2.2-4025 et seq.) of the Administrative Process Act.~~

2. That the second enactment of Chapter 808 of the Acts of Assembly of 2019 is amended and reenacted as follows:

2. That the provisions of this act shall apply to taxable years beginning on and after January 1, 2019, but before January 1, 2024 2023.