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SENATE BILL NO. 1179

Offered January 11, 2023

Prefiled January 10, 2023

A BILL to amend and reenact §§ 58.1-439.25 and 58.1-439.28, as they shall become effective, of the Code of Virginia, relating to education improvement scholarships tax credits; eligible student with a disability.

Patron—DeSteph

Referred to Committee on Finance and Appropriations

Be it enacted by the General Assembly of Virginia:

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

§ 58.1-439.25. (Applicable to taxable years beginning January 1, 2024) 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 unable to obtain services through Head Start or Virginia Preschool Initiative programs; and (iii) enrolled in, eligible to attend, 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), 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, and whose parent or guardian certifies to the scholarship foundation that the child was unable to obtain services through the Virginia Preschool Initiative in the public school division in which the child resides.

"Eligible student with a disability" means a ~~student~~ *child who is a resident of Virginia* for whom an ~~individualized educational program~~ *Individualized Education Plan (IEP)* has been written and finalized in accordance with the federal Individuals with Disabilities Education Act (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.~~ *For purposes of this article, an "eligible student with a disability" need not qualify as a "student" as defined by this section.*

"Nonpublic pre-kindergarten program" means a pre-kindergarten program that is not operated, 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 the Unified Virginia Quality ~~with a current designation of at least Level 3 under such quality rating system~~ *Birth to Five System (VQB5)*; 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 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

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59 scholarship was domiciled in a state other than the Commonwealth and did not attend a nonpublic
60 school in the Commonwealth for more than one-half of the school year. "Student" does not include an
61 eligible pre-kindergarten child.

62 "*Unified Virginia Quality Birth to Five System (VQB5)*" means a quality rating and improvement
63 system for early childhood programs administered in partnership between the Virginia Early Childhood
64 Foundation and the Office of Early Childhood Development of by the Department of Social
65 Services Education.

66 **§ 58.1-439.28. (Applicable to taxable years beginning on and after January 1, 2024) Guidelines**
67 **for scholarship foundations.**

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

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

105 C. In awarding scholarships from tax-credit-derived funds, the scholarship foundation shall (i)
106 provide scholarships for qualified educational expenses only to students whose family's annual household
107 income is not in excess of 300 percent of the current poverty guidelines, eligible students with a
108 disability *whose family's annual household income is not in excess of 400 percent of the current poverty*
109 *guidelines*, or eligible pre-kindergarten children; (ii) not limit scholarships to students *or eligible students*
110 *with a disability* of one school; and (iii) comply with Title VI of the Civil Rights Act of 1964, as
111 amended. Payment of scholarships from tax-credit-derived funds by the eligible scholarship foundation
112 shall be by individual warrant or check made payable to and mailed to the eligible school that the
113 student's parent or legal guardian *of the student or eligible student with a disability* indicates. In mailing
114 such scholarship payments, the eligible scholarship foundation shall include a written notice to the
115 eligible school that the source of the scholarship was donations made by persons receiving tax credits
116 for the same pursuant to this article.

117 D. 1. Scholarship foundations shall ensure that schools selected by students *or eligible students with*
118 *a disability* to which tax-credit-derived funds may be paid (i) are in compliance with the
119 Commonwealth's and locality's health and safety laws and codes; (ii) hold a valid occupancy permit as
120 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'~~ *the progress of students or eligible students with a disability* 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 *or eligible students with a disability* receiving tax-credit-derived scholarships and shall provide the respective parents or legal guardians of such students *or eligible students with a disability* with a copy of the results on an annual basis, beginning with the first year of testing of the student *or eligible student with a disability*. Such schools also shall annually provide to the Department of Education for each such student *or eligible student with a disability* the achievement test results, beginning with the first year of testing of the student *or eligible student with a disability*, 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 *or eligible student with a disability*. Eligible schools shall annually provide to the Superintendent of Public Instruction graduation rates of its students *or eligible students with a disability* 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 *or eligible student with a disability who does not meet the requirements of subdivision 2* 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~~ *local 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.

3. a. *Except as provided in subdivision 1, the aggregate amount of scholarships provided to each eligible student with a disability 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*

182 eligible student with a disability or (ii) 300 percent of the per pupil amount distributed to the local
183 school division (in which the eligible student with a disability resides) as the state's share of the
184 standards of quality costs using the composite index of local ability-to-pay as defined in the general
185 appropriation act.

186 b. Except as provided in subdivision 1, scholarships may only be provided to an eligible student with
187 a disability who is attending a school for students with disabilities, as defined in § 22.1-319, that (i) is
188 licensed by the Department of Education to serve students with disabilities, (ii) complies with the
189 nonpublic school accreditation requirements of the Virginia Association of Independent Schools, (iii) is
190 exempt from taxation under § 501(c)(3) of the Internal Revenue Code, and (iv) does not receive public
191 funds to supplement the cost of the education of the eligible student with a disability who is receiving
192 the scholarship pursuant to this section.

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

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

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

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

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