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SENATE BILL NO. 1360

Offered January 11, 2023

Prefiled January 11, 2023

A *BILL to amend and reenact §§ 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 education improvement scholarships tax credits.*

Patrons—Norment, DeSteph, Dunnavant, Reeves and Ruff

Referred to Committee on Finance and Appropriations

Be it enacted by the General Assembly of Virginia:

1. That §§ 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:

§ 58.1-439.25. (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) is 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 (i) for whom an individualized educational program 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.

"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 22.1-289.02, that is licensed by the Department of Social Services pursuant to Subtitle IV (§ 63.2-1700 et seq.) of Title 63.2 Board of Education pursuant to Article 3 (§ 22.1-289.010 et seq.) of Chapter 14.1 of Title 22.1 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 is a person of school age as defined in § 22.1-1.

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 Division of Early Childhood Development Care of the Department of Social
65 Services Education.

66 **§ 58.1-439.26. Tax credit for donations to certain scholarship foundations.**

67 A. Notwithstanding the provisions of § 30-19.1:11, for taxable years beginning on or after January 1,
68 2013, but before January 1, 2028, a person shall be eligible to earn a credit against any tax due under
69 Article 2 (§ 58.1-320 et seq.) or Article 10 (§ 58.1-400 et seq.), Chapter 12 (§ 58.1-1200 et seq.),
70 Chapter 25 (§ 58.1-2500 et seq.), or Article 2 (§ 58.1-2620 et seq.) of Chapter 26 in an amount equal to
71 (i) for taxable years beginning on and after January 1, 2013, but before January 1, 2023, 65 percent
72 and (ii) for taxable years beginning on and after January 1, 2023, but before January 1, 2028, 100
73 percent of the value of the monetary or marketable securities donation made by the person to a
74 scholarship foundation included on the list published annually by the Department of Education in
75 accordance with the provisions of § 58.1-439.28.

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

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

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

88 2. The amount of the credit shall not exceed the person's tax liability pursuant to Article 2
89 (§ 58.1-320 et seq.) or Article 10 (§ 58.1-400 et seq.), Chapter 12 (§ 58.1-1200 et seq.), Chapter 25
90 (§ 58.1-2500 et seq.), or Article 2 (§ 58.1-2620 et seq.) of Chapter 26, as applicable, for the taxable year
91 for which the credit is claimed. Any credit not usable for the taxable year for which first allowed may
92 be carried over for credit against the taxes imposed upon the person pursuant to Article 2 (§ 58.1-320 et
93 seq.) or Article 10 (§ 58.1-400 et seq.), Chapter 12 (§ 58.1-1200 et seq.), Chapter 25 (§ 58.1-2500 et
94 seq.), or Article 2 (§ 58.1-2620 et seq.) of Chapter 26, as applicable, in the next five succeeding taxable
95 years or until the total amount of the tax credit has been taken, whichever is sooner.

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

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

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

115 **§ 58.1-439.28. (Applicable to taxable years beginning on and after January 1, 2024) Guidelines**
116 **for scholarship foundations.**

117 A. As a condition for qualification by the Department of Education, a scholarship foundation, as
118 defined in § 58.1-439.25 and included on the list published annually by the Department of Education
119 pursuant to this section, shall disburse an amount at least equal to 90 percent of the value of the
120 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 *and eligible pre-kindergarten children*. 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 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 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

182 academic performance of such children while attending primary or secondary school with other children
183 attending primary or secondary school who have attended a pre-kindergarten program, including
184 programs funded under the Virginia Preschool Initiative; and (v) require professional development of
185 program teachers, which enables such teachers to engage in high-quality interactions with eligible
186 pre-kindergarten children and provide high-quality instruction in accordance with the curriculum
187 described under clause (i). Each nonpublic pre-kindergarten program teacher at a minimum shall have
188 earned a certificate from a nationally recognized early childhood education certificate program, including
189 but not limited to any early childhood education program provided or sponsored by the Virginia
190 Community College System.

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

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

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

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

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

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

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

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

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

241 J. Actions of the Superintendent of Public Instruction or the Department of Education relating to the
242 awarding of tax credits under this article and the qualification of scholarship foundations shall be exempt
243 from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.). Decisions of the

244 Superintendent of Public Instruction or the Department of Education shall be final and not subject to
245 review or appeal.
246 **2. That the second enactment of Chapter 808 of the Acts of Assembly of 2019 is amended and**
247 **reenacted as follows:**
248 **2. That the provisions of this act shall apply to taxable years beginning on and after January 1,**
249 **2019, but before January 1, ~~2024~~ 2023.**

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