DEPARTMENT OF TAXATION
2023 Fiscal Impact Statement

1. **Patron** Carrie E. Coyner

2. **Bill Number** HB 1367
   House of Origin:
   X **Introduced**
   ____ **Substitute**
   ____ **Engrossed**

   Second House:
   ____ **In Committee**
   ____ **Substitute**
   ____ **Enrolled**

3. **Committee** House Finance

4. **Title** Individual and Corporate Income Tax; Credit for Employer Contributions to Virginia College Savings Plan Accounts

5. **Summary/Purpose:**

This bill would provide an individual and corporate income tax credit equal to 35 percent of the expenses incurred by a business during the taxable year for contributions into a Virginia College Savings Plan account owned by a qualified employee of such business. The amount of the credit would generally be limited to $500 per qualified employee. However, the maximum credit would increase to $1,000 per employee for a contribution to an employee deemed not highly compensated. The credit would be subject to an annual credit cap of $5 million.

This bill would be effective for taxable years beginning on and after January 1, 2023, but before January 1, 2028.

6. **Budget amendment necessary:** Yes.
   Item(s): Page 1, Revenue Estimates
   274 and 276, Department of Taxation

7. **Fiscal Impact Estimates are:** Preliminary. (See Line 8.)
   7a. Expenditure Impact:

Fiscal Year	***Dollars***	***Positions***	***Fund***
2023-24	($283,573)	1	GF
2024-25	($75,898)	1	GF
2025-26	($75,898)	1	GF
2026-27	($75,898)	1	GF
2027-28	($75,898)	1	GF
2028-29	($75,898)	1	GF

8. **Fiscal implications:**

Administrative Costs

The Department of Taxation ("the Department") estimates that this bill would result in additional administrative costs $283,573 in Fiscal Year 2024 and $75,898 in each fiscal year thereafter. These cost include the addition of one full-time employee and the expenses associated with creating a new tax credit program, including updating technology, forms, and systems.

The Virginia College Savings Plan considers implementation of this bill as routine and does not require additional funding.

Revenue Impact

This bill would have an unknown negative General Fund revenue impact of up to $5 million annually beginning in Fiscal Year 2024. It is unknown to what extent employers would contribute to their employees' Virginia College Savings Plan accounts and claim this tax credit. However, the negative revenue impact would be limited by the $5 million annual credit cap.

9. Specific agency or political subdivisions affected:

Department of Taxation
Virginia College Savings Plan

10. Technical amendment necessary: No.

11. Other comments:

Virginia College Savings Plan

In 1996, Congress enacted Internal Revenue Code § 529, which allowed taxpayers to set up tax-advantaged college savings plans, also referred to as qualified tuition plans or Section 529 plans. Such plans are generally exempt from federal income tax. To qualify as a Section 529 plan, the plan must be operated by a state or educational institution. The Virginia College Savings Plan is an independent agency of the Commonwealth that administers Section 529 plans. Currently the Virginia College Savings Plan only offers *Invest 529* which is a savings plan that allows account owners to choose from a variety of investment options, including age-based evolving and non-evolving portfolios to meet a variety of investment objectives, risk tolerances, and college savings time horizons.

Because Virginia conforms to federal income tax law, Section 529 plans are also generally exempt from the Virginia income tax. As long as funds withdrawn from Section 529 plans are used for a qualifying educational purposes, including tuition for Kindergarten through 12th grade beneficiaries, account owners do not pay income tax on the gains accumulated in Section 529 accounts. Virginia law also allows a subtraction for any income attributable to a distribution of benefits or a refund from a prepaid tuition contract or savings trust account with the Virginia College Savings Plan, provided that any income attributable to a refund is due to a beneficiary's death, disability, or receipt of a scholarship.

In addition, Virginia provides an individual income tax deduction for the purchaser or contributor for the amount paid or contributed during the taxable year for a prepaid tuition contract or savings trust account entered into with the Virginia College Savings Plan. The amount deducted on any individual income tax return is generally limited to $4,000 per prepaid tuition contract or savings trust account.

Sunset Dates for New Income Tax Credits and Sales Tax Exemptions

Section 3-5.14 of the 2022 Appropriation Act provides that any new sales tax exemption or tax credit enacted by the General Assembly after the 2019 Session, but prior to the 2024 Session, must have a sunset date of not later than June 30, 2025.

Proposed Legislation

This bill would provide an individual and corporate income tax credit equal to 35 percent of the expenses incurred by a business during the taxable year for contributions into a Virginia College Savings Plan account owned by a qualified employee of such business. The amount of the credit would generally be limited to $500 per qualified employee. However, the maximum credit would increase to $1,000 per employee for a contribution to an employee deemed not highly compensated.

The credit would be subject to an annual credit cap of $5 million. If applications for credits exceed $5 million for any taxable year, the credits would be allocated on a pro rata basis.

"Qualified employee" would be defined as an employee of a business eligible for this credit in a full-time position requiring a minimum of 1,680 hours in a normal fiscal year of the business's operations if the standard fringe benefits are paid by the business for the employee and the employee currently resides in Virginia. Qualified employee does not include an employee in a seasonal or temporary position and does not include an owner or relative.

“Owner" would be defined as an individual who owns, directly or indirectly, more than a five percent interest in the business claiming the credit.

"Relative" would be defined as a spouse, child, grandchild, parent, or sibling of an owner.

“Not highly compensated” would be defined as a qualified employee whose income is less than Virginia’s median wage, as reported by the Virginia Employment Commission, in the taxable year prior to a business’s applying for the credit.

The amount of the credit that may be claimed in any single taxable year would be limited to the taxpayer’s income tax liability for the taxable year. If the amount of credits exceeds the taxpayer’s tax liability for the taxable year in which the contributions were made, the taxpayer would be allowed to carry over the excess for credit against income taxes for the next three years or until the total amount of the tax credit has been taken, whichever occurs first.

No credits would be permitted to be applied retroactively to taxable years prior to the taxable year in which the contributions were made.

Credits granted to a partnership, electing small business corporation (S corporation), or limited liability company would be required to be allocated to the individual partners, shareholders, or members, respectively, in proportion to their ownership or interest in such business entity.

This bill would require the Department, in consultation with the Virginia College Savings Plan, to develop guidelines, exempt from the Administrative Process Act, for claiming the credit. This bill would also require the Department to submit an annual report to the Chairmen of the House Finance Committee and Senate Finance and Appropriations Committee regarding the status and implementation of the credit.

This bill would be effective for taxable years beginning on and after January 1, 2023, but before January 1, 2028.

Similar Legislation

House Bill 1740 would create an identical tax credit but would also increase the Virginia 529 income tax deduction and create a new income tax deduction specifically for Virginia 529 contributions by child day centers or child day programs.

cc : Secretary of Finance

Date: 1/26/2023 RWC
HB1367F161