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HOUSE BILL NO. 294**AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the House Committee on Education
on January 31, 2022)

(Patron Prior to Substitute—Delegate Freitas)

A BILL to amend and reenact §§ 22.1-5, 58.1-439.25, as it is currently effective and as it shall become effective, and 58.1-439.28, as it is currently effective and as it shall become effective, of the Code of Virginia, relating to education improvement scholarship tax credits; students in need of a safer school environment.

Be it enacted by the General Assembly of Virginia:

1. That §§ 22.1-5, 58.1-439.25, as it is currently effective and as it shall become effective, and 58.1-439.28, as it is currently effective and as it shall become effective, of the Code of Virginia are amended and reenacted as follows:

§ 22.1-5. Regulations concerning admission of certain persons to schools; tuition charges.

A. Consistent with Article VIII, Section 1 of the Constitution of Virginia, no person may be charged tuition for admission or enrollment in the public schools of the Commonwealth, whether on a full-time or part-time basis, who meets the residency criteria set forth in § 22.1-3. No person of school age shall be charged tuition for enrollment in a program preparing students to pass a high school equivalency examination approved by the Board of Education or alternative program offered as a regional or divisionwide initiative by the local school division in which such person is deemed to reside pursuant to § 22.1-3. Further, no person of school age shall be denied admission or charged tuition when (i) such person's custodial parent has been deployed outside the United States as a member of the Virginia National Guard or as a member of the United States armed forces; and (ii) such person's custodial parent has executed a Special Power of Attorney under Title 10, United States Code, § 1044b providing for the care of the person of school age by an individual who is defined as a parent in § 22.1-1 during the time of his deployment outside the United States. The person of school age shall be allowed to attend a school in the school division in which the individual providing for his care, pursuant to the Special Power of Attorney under Title 10, United States Code, § 1044b, resides. Furthermore, when practicable, such persons of school age may continue to attend school in the Virginia school division they attended immediately prior to the deployment and shall not be charged tuition for attending such division.

The following persons may, however, in the discretion of the school board of a school division and pursuant to regulations adopted by the school board, be admitted into the public schools of the division and may, in the discretion of the school board, be charged tuition:

1. Persons who reside within the school division but who are not of school age.

2. ~~Persons~~ *Except as otherwise provided in this section, persons* of school age who are residents of the Commonwealth but who do not reside within the school division, ~~except as provided in this section including any eligible student in need of a safer school environment, as that term is defined in § 58.1-439.25, who does not reside within the school division but who seeks to enroll in the school division using the proceeds of a scholarship received from a scholarship foundation, as that term is defined in § 58.1-439.25.~~

3. Persons of school age who are attending school in the school division pursuant to a foreign student exchange program approved by the school board.

4. Persons of school age who reside beyond the boundaries of the Commonwealth but near thereto in a state or the District of Columbia which grants the same privileges to residents of the Commonwealth.

5. Persons of school age who reside on a military or naval reservation located wholly or partly within the geographical boundaries of the school division and who are not domiciled residents of the Commonwealth of Virginia; however, no person of school age residing on a military or naval reservation located wholly or partly within the geographical boundaries of the school division may be charged tuition if federal funds provided under P.L. 874 of 1950, commonly known as Impact Aid, shall fund such students at not less than 50 percent of the total per capita cost of education, exclusive of capital outlay and debt service, for elementary or secondary pupils, as the case may be, of such school division. Notwithstanding any other provision of law to the contrary, such persons of school age who reside on a military or naval reservation with military-owned housing located wholly or partly within the geographical boundaries of multiple school divisions shall be deemed eligible for interscholastic programs immediately upon enrollment in a public elementary or secondary school in any of the aforementioned school divisions, provided that such persons (i) satisfy all other requirements for eligibility and (ii) are dependents of a military service member required by the military to live on the military installation as evidenced by a statement on command letterhead signed by, or by direction of, the service member's commanding officer.

6. Persons of school age who, as domiciled residents of the Commonwealth who were enrolled in a public school within the school division, are required as a result of military or federal orders issued to their parents to relocate and reside on federal property in another state or the District of Columbia, if the school division subsequently enrolling such persons is contiguous to such state or District of Columbia.

7. Persons of school age who reside in the school division and who are enrolled in summer programs, exclusive of required remediation as provided in § 22.1-253.13:1, or in local initiatives or programs not required by the Standards of Quality or the Standards of Accreditation.

For the purposes of determining the residency of persons described in subdivisions 1 and 2, local school boards shall adopt regulations consistent with the residency requirements regarding persons residing in housing or temporary shelter, or on property located in multiple jurisdictions, as articulated in § 22.1-3.

B. Persons of school age who are not residents of the Commonwealth but are living temporarily with persons residing within a school division may, in the discretion of the school board and pursuant to regulations adopted by it, be admitted to the public schools of the school division. Tuition shall be charged such persons.

C. No tuition charge authorized or required in this section shall exceed the total per capita cost of education, exclusive of capital outlay and debt service, for elementary or secondary pupils, as the case may be, of such school division and the actual, additional costs of any special education or gifted and talented program provided the pupil, except that if the tuition charge is payable by the school board of the school division of the pupil's residence pursuant to a contract entered into between the two school boards, the tuition charge shall be that fixed by such contract.

D. School boards may accept and provide programs for students for whom English is a second language who entered school in Virginia for the first time after reaching their twelfth birthday, and who have not reached 22 years of age on or before August 1 of the school year. No tuition shall be charged such students, if state funding is provided for such programs.

§ 58.1-439.25. (Applicable to taxable years beginning before 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 in need of a safer school environment" means a student who, while enrolled in a public elementary or secondary school in kindergarten through grade 12, was the victim of assault, battery, bullying, harassment, hazing, kidnapping, or robbery on school property, on a school bus, or at a school-sponsored activity, as substantiated by an investigation and written report by the school principal. For purposes of this article, an eligible student in need of a safer school environment need not qualify as a student as defined in this section.

"Eligible student with a disability" means a child who is a resident of Virginia for whom an 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. For purposes of this article, an eligible student with a disability need not qualify as 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 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 school-related tuition and instructional fees and materials,

including textbooks, workbooks, and supplies used solely for school-related work. *In the case of an eligible student in need of a safer school environment, "qualified educational expenses" includes any tuition charged pursuant to § 22.1-5 and any expenses associated with transporting such student to another public school within or outside of his school division of residence.*

"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, *eligible students in need of a safer school environment*, or eligible students with a disability 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 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.

§ 58.1-439.25. (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 in need of a safer school environment" means a student who, while enrolled in a public elementary or secondary school in kindergarten through grade 12, was the victim of assault, battery, bullying, harassment, hazing, kidnapping, or robbery on school property, on a school bus, or at a school-sponsored activity, as substantiated by an investigation and written report by the school principal. For purposes of this article, an eligible student in need of a safer school environment need not qualify as a student as defined in this section.

"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 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 school-related tuition and instructional fees and materials, including textbooks, workbooks, and supplies used solely for school-related work. *In the case of an eligible student in need of a safer school environment, "qualified educational expenses" includes any tuition charged pursuant to § 22.1-5 and any expenses associated with transporting such student to*

another public school within or outside of his school division of residence.

"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 *and eligible students in need of a safer school environment* 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 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.

§ 58.1-439.28. (Applicable to taxable years beginning on and after January 1, 2019, but before 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 scholarships to students, *eligible students in need of a safer school environment*, or eligible students with a disability. 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 whose family's annual household income is not in excess of 400 percent of the current poverty

guidelines, *eligible students in need of a safer school environment*, or eligible pre-kindergarten children; (ii) not limit scholarships to students, *eligible students in need of a safer school environment*, or eligible students with a disability 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 parent or legal guardian of the student, *eligible student in need of a safer school environment*, or eligible student with a disability indicates; *however, for a parent of an eligible student in need of a safer school environment, a scholarship foundation may make a payment directly to the parent for documented expenses associated with transporting the student to another public school within or outside of his school division of residence.* 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, *eligible students in need of a safer school environment*, or eligible students with a disability 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 the progress of scholarship 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. *This subdivision shall not apply to an eligible student in need of a safer school environment who transfers to another public school within or outside of his school division of residence.*

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, *eligible students in need of a safer school environment*, or eligible students with a disability receiving tax-credit-derived scholarships and shall provide the respective parents or legal guardians of such students, *eligible students in need of a safer school environment*, 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, *eligible student in need of a safer school environment*, or eligible student with a disability. Such schools also shall annually provide to the Department of Education for each such student, *eligible student in need of a safer school environment*, or eligible student with a disability the achievement test results, beginning with the first year of testing of the student, *eligible student in need of a safer school environment*, or eligible student with a disability, and 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 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*

306 *student in need of a safer school environment*, or eligible student with a disability. Eligible schools shall
307 annually provide to the Superintendent of Public Instruction graduation rates of its students, *eligible*
308 *students in need of a safer school environment*, or eligible students with a disability participating in the
309 scholarship program in a manner consistent with nationally recognized standards. In publishing and
310 disseminating achievement test results and other information, the Superintendent of Public Instruction
311 and the Department of Education shall ensure compliance with all student privacy laws.

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

313 E. 1. The aggregate amount of scholarships provided to each student, *eligible student in need of a*
314 *safer school environment*, or eligible student with a disability who does not meet the requirements of
315 subdivision 2 for any single school year by all eligible scholarship foundations from eligible donations
316 shall not exceed the lesser of (i) the actual qualified educational expenses of the student or (ii) 100
317 percent of the per-pupil amount distributed to the local school division (in which the student resides) as
318 the state's share of the standards of quality costs using the composite index of ability to pay as defined
319 in the general appropriation act.

320 2. a. Except as provided in subdivision 1, the aggregate amount of scholarships provided to each
321 eligible student with a disability for any single school year by all eligible scholarship foundations from
322 eligible donations shall not exceed the lesser of (i) the actual qualified educational expenses of the
323 student or (ii) 300 percent of the per pupil amount distributed to the local school division (in which the
324 eligible student with a disability resides) as the state's share of the standards of quality costs using the
325 composite index of ability to pay as defined in the general appropriation act.

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

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

338 F. Scholarship foundations shall develop procedures for disbursing scholarships in quarterly or
339 semester payments throughout the school year to ensure scholarships are portable. *Payments for*
340 *transportation costs to parents of eligible students in need of a safer school environment may be made*
341 *on a more frequent basis as determined by the scholarship foundation.*

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

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

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

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

365 **§ 58.1-439.28. (Applicable to taxable years beginning on and after January 1, 2024) Guidelines**
366 **for scholarship foundations.**

367 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 *and eligible students in need of a safer school environment*. 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 in need of a safer school environment*, 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; *however, for a parent of an eligible student in need of a safer school environment, a scholarship foundation may make a payment directly to the parent for documented expenses associated with transporting the student to another public school within or outside of his school division of residence*. 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 *or eligible students in need of a safer school environment* 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. *This subdivision shall not apply to an eligible student in need of a safer*

429 *school environment who transfers to another public school within or outside of his school division of*
430 *residence.*

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

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

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

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

469 E. 1. The aggregate amount of scholarships provided to each student *or eligible student in need of a*
470 *safer school environment* for any single school year by all eligible scholarship foundations from eligible
471 donations shall not exceed the lesser of (i) the actual qualified educational expenses of the student or (ii)
472 100 percent of the per-pupil amount distributed to the local school division (in which the student
473 resides) as the state's share of the standards of quality costs using the composite index of ability to pay
474 as defined in the general appropriation act.

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

480 F. Scholarship foundations shall develop procedures for disbursing scholarships in quarterly or
481 semester payments throughout the school year to ensure scholarships are portable. *Payments for*
482 *transportation costs to parents of eligible students in need of a safer school environment may be made*
483 *on a more frequent basis as determined by the scholarship foundation.*

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

487 H. Each scholarship foundation with total revenues (including the value of all donations) (i) in excess
488 of \$100,000 for the foundation's most recent fiscal year ended shall have an audit or review performed
489 by an independent certified public accountant of the foundation's donations received in such year for
490 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 shall be final and not subject to review or appeal.

2. That nothing in the provisions of this act shall be construed to prohibit or preclude any public elementary or secondary school or any local school division from offering to an eligible student in need of a safer school environment, as that term is defined in § 58.1-439.25 of the Code of Virginia, as amended by this act, (i) the supports and services necessary to ensure that the public school at which he is currently enrolled is safe for the student, (ii) tuition-free open enrollment at another public school within the same local school division pursuant to an open school enrollment policy adopted by the local school board pursuant to § 22.1-7.1 of the Code of Virginia, (iii) tuition-free enrollment at a public school in another local school division pursuant to an agreement between such local school division and the student's local school division of residence, or (iv) any other tuition-free public education alternative that suits the student's unique educational needs.