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HOUSE BILL NO. 294

Offered January 12, 2022

Prefiled January 11, 2022

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

Patron—Freitas

Committee Referral Pending

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-439.25 and 58.1-439.28, as they are currently effective and 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 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*

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59 *environment*, or eligible students with a disability residing in the Commonwealth.

60 "Student" means a child who is a resident of Virginia and (i) in the current school year has enrolled
61 and attended a public school in the Commonwealth for at least one-half of the year, (ii) for the school
62 year that immediately preceded his receipt of a scholarship foundation scholarship was enrolled and
63 attended a public school in the Commonwealth for at least one-half of the year, (iii) is a prior recipient
64 of a scholarship foundation scholarship, (iv) is eligible to enter kindergarten or eligible to enter first
65 grade, or (v) for the school year that immediately preceded his receipt of a scholarship foundation
66 scholarship was domiciled in a state other than the Commonwealth and did not attend a nonpublic
67 school in the Commonwealth for more than one-half of the school year. "Student" does not include an
68 eligible pre-kindergarten child.

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

72 **§ 58.1-439.25. (Applicable to taxable years beginning January 1, 2024) Definitions.**

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

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

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

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

96 "Nonpublic pre-kindergarten program" means a pre-kindergarten program that is not operated, directly
97 or indirectly, by a federal, state, or local government entity and that is (i) a preschool program designed
98 for child development and kindergarten preparation that complies with nonpublic school accreditation
99 requirements administered by the Virginia Council for Private Education pursuant to § 22.1-19; (ii)
100 participating in Virginia Quality with a current designation of at least Level 3 under such quality rating
101 system; or (iii) a child day center, as defined in § 63.2-100, that is licensed by the Department of Social
102 Services pursuant to Subtitle IV (§ 63.2-1700 et seq.) of Title 63.2 and implements a curriculum,
103 professional development program, and coaching model developed and endorsed by a baccalaureate
104 public institution of higher education, as defined in § 23.1-100.

105 "Poverty guidelines" means the poverty guidelines for the 48 contiguous states and the District of
106 Columbia updated annually in the Federal Register by the U.S. Department of Health and Human
107 Services under the authority of § 673(2) of the Omnibus Budget Reconciliation Act of 1981.

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

113 "Scholarship foundation" means a nonstock, nonprofit corporation that is (i) exempt from taxation
114 under § 501(c)(3) of the Internal Revenue Code of 1954, as amended or renumbered; (ii) approved by
115 the Department of Education in accordance with the provisions of § 58.1-439.27; and (iii) established to
116 provide financial aid for the education of students *and eligible students in need of a safer school*
117 *environment* residing in the Commonwealth.

118 "Student" means a child who is a resident of Virginia and (i) in the current school year has enrolled
119 and attended a public school in the Commonwealth for at least one-half of the year, (ii) for the school
120 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

182 *documented expenses associated with transporting the student to another public school within or outside*
183 *of his school division of residence.* In mailing such scholarship payments, the eligible scholarship
184 foundation shall include a written notice to the eligible school that the source of the scholarship was
185 donations made by persons receiving tax credits for the same pursuant to this article.

186 D. 1. Scholarship foundations shall ensure that schools selected by students, *eligible students in need*
187 *of a safer school environment*, or eligible students with a disability to which tax-credit-derived funds
188 may be paid (i) are in compliance with the Commonwealth's and locality's health and safety laws and
189 codes; (ii) hold a valid occupancy permit as required by the locality; (iii) comply with Title VI of the
190 Civil Rights Act of 1964, as amended; and (iv) are (a) for students in grades K through 12, nonpublic
191 schools that comply with nonpublic school accreditation requirements as set forth in § 22.1-19 and
192 administered by the Virginia Council for Private Education or nonpublic schools that maintain an
193 assessment system that annually measures the progress of scholarship students or eligible students with a
194 disability in reading and math using a national norm-referenced achievement test, including but not
195 limited to the Stanford Achievement Test, California Achievement Test, and Iowa Test of Basic Skills
196 and (b) for eligible pre-kindergarten children, nonpublic pre-kindergarten programs. *This subdivision*
197 *shall not apply to an eligible student in need of a safer school environment who transfers to another*
198 *public school within or outside of his school division of residence.*

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

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

220 3. Eligible schools shall compile the results of any national norm-referenced achievement test for
221 each of its students, *eligible students in need of a safer school environment*, or eligible students with a
222 disability receiving tax-credit-derived scholarships and shall provide the respective parents or legal
223 guardians of such students, *eligible students in need of a safer school environment*, or eligible students
224 with a disability with a copy of the results on an annual basis, beginning with the first year of testing of
225 the student, *eligible students in need of a safer school environment*, or eligible student with a disability.
226 Such schools also shall annually provide to the Department of Education for each such student, *eligible*
227 *students in need of a safer school environment*, or eligible student with a disability the achievement test
228 results, beginning with the first year of testing of the student, *eligible students in need of a safer school*
229 *environment*, or eligible student with a disability, and information that would allow the Department to
230 aggregate the achievement test results by grade level, gender, family income level, number of years of
231 participation in the scholarship program, and race. Beginning with the third year of testing and
232 test-related data collection, the Department of Education shall ensure that the achievement test results
233 and associated learning gains are published on the Department of Education's website in accordance with
234 such classifications and in an aggregate form as to prevent the identification of any student, *eligible*
235 *student in need of a safer school environment*, or eligible student with a disability. Eligible schools shall
236 annually provide to the Superintendent of Public Instruction graduation rates of its students, *eligible*
237 *students in need of a safer school environment*, or eligible students with a disability participating in the
238 scholarship program in a manner consistent with nationally recognized standards. In publishing and
239 disseminating achievement test results and other information, the Superintendent of Public Instruction
240 and the Department of Education shall ensure compliance with all student privacy laws.

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

242 E. 1. The aggregate amount of scholarships provided to each student, *eligible students in need of a*
243 *safer school environment*, 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 as defined in the general appropriation act.

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

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

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

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

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

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

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

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

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

A. As a condition for qualification by the Department of Education, a scholarship foundation, as defined in § 58.1-439.25 and included on the list published annually by the Department of Education pursuant to this section, shall disburse an amount at least equal to 90 percent of the value of the donations it receives (for which tax credits were issued under this article) during each 12-month period ending on June 30 by the immediately following June 30 for qualified educational expenses through 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 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 receiving tax-credit-derived scholarships and shall provide the respective parents or legal guardians of such students with a copy of the results on an annual basis, beginning with the first year of testing of the student. Such schools also shall annually provide to the Department of Education for each such student the achievement test results, beginning with the first year of testing of the student, and student information that would allow the Department to aggregate the achievement test results by grade level, gender, family income level, number of years of participation in the scholarship program, and race. Beginning with the third year of testing of each such student and test-related data collection, the Department of Education shall ensure that the achievement test results and associated learning gains are published on the Department of Education's website in accordance with such classifications and in an aggregate form as to prevent the identification of any student. Eligible schools shall annually provide to the Superintendent of Public Instruction graduation rates of its students participating in the scholarship program in a manner consistent with nationally recognized standards. In publishing and disseminating achievement test results and other information, the Superintendent of Public Instruction and the Department of Education shall ensure compliance with all student privacy laws.

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

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

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

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

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

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

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

428 foundation continues to meet the requirements of this article.

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