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HOUSE BILL NO. 982

Offered January 12, 2022

Prefiled January 12, 2022

A BILL to amend and reenact §§ 22.1-254.1, 58.1-439.25, as it is currently effective and as it shall become effective, 58.1-439.26, and 58.1-439.28, as it is currently effective and as it shall become effective, of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 13 of Title 22.1 an article numbered 2.1, consisting of sections numbered 22.1-222.1 through 22.1-222.9, relating to the Education Savings Account Program; establishment; Education Improvement Scholarships Tax Credits.

Patrons—Scott, P.A., March and Williams

Referred to Committee on Education

Be it enacted by the General Assembly of Virginia:

1. That §§ 22.1-254.1, 58.1-439.25, as it is currently effective and as it shall become effective, 58.1-439.26, 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 and the Code of Virginia is amended by adding in Chapter 13 of Title 22.1 an article numbered 2.1, consisting of sections numbered 22.1-222.1 through 22.1-222.9, as follows:

Article 2.1.

Education Savings Account Program.

§ 22.1-222.1. Definitions.

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

"Commission" means the Parent Review Commission established pursuant to § 22.1-222.5.

"Curriculum" means a complete course of study for a particular content area or grade level.

"Department" means the Department of Education or an organization with which the Department of Education has contracted to carry out all or any portion of the Program.

"Education Savings Account" or "ESA" means the account to which funds are allocated by the Department to the parent of an ESA student to pay for qualifying education expenses to educate the ESA student pursuant to the requirements and conditions in this article.

"Education service provider" means a person or organization that receives payments from an ESA to provide educational goods and services to an ESA student.

"Eligible student" means a resident of the Commonwealth who is eligible to enroll in a public elementary or secondary school.

"ESA student" means an eligible student who is participating in the Program.

"Program" means the Education Savings Account Program.

§ 22.1-222.2. Education Savings Account Program established; eligibility; amount; certain conditions and limitations.

A. The Education Savings Account Program is hereby established for the purpose of providing parents in the Commonwealth with resources and choices for the education of their children. The Program shall be administered by the Department.

B. The total amount that the Department shall deposit into the ESA of each ESA student, in quarterly installments, shall be equal to the average amount spent on public school students by the state and local school division in which the ESA student resides, except that for ESA students with disabilities, who are English language learners, who are homeless, and who are low-income, the total amount deposited shall include any weighted funding that would have been provided to a public school for that ESA student.

C. The parents of an ESA student shall agree to use the funds deposited in the ESA student's ESA solely for any of the following qualifying expenses to educate the ESA student:

1. Tuition or fees at a private school;

2. Tuition or fees for a nonpublic online learning program;

3. Tutoring services provided by an individual or a tutoring facility;

4. Services contracted for and provided by a local school division or public charter or magnet school, including individual classes and extracurricular activities and programs;

5. Textbooks, curriculum, or other instructional materials, including any supplemental materials or associated online instruction required by either a curriculum or an education service provider;

6. Computer hardware or other technological devices that are primarily used to help meet an ESA student's educational needs;

7. Educational software and applications;

59 8. School uniforms;

60 9. Fees for nationally standardized assessments, Advanced Placement examinations, or examinations
61 related to college or university admission, or tuition or fees for preparatory courses for any such
62 examinations;

63 10. Tuition or fees for summer education programs or specialized after-school education programs,
64 excluding after-school childcare;

65 11. Tuition, fees, instructional materials, or examination fees at a career or technical school;

66 12. Educational services or therapies, including occupational, behavioral, physical, speech-language,
67 and audiology therapies;

68 13. Tuition or fees at an institution of higher education;

69 14. Fees for transportation paid to a fee-for-service transportation provider for the student to travel
70 to and from an education service provider; or

71 15. Any other educational expense approved by the Department with assistance from the
72 Commission.

73 D. The funds in an ESA shall be used solely for educational purposes in accordance with subsection
74 C.

75 E. ESA funds shall not be refunded to, rebated to, or shared with a parent or ESA student in any
76 manner. Any refund or rebate for goods or services purchased with ESA funds shall be credited directly
77 to the student's ESA.

78 F. Parents may make payments for the costs of educational goods and services not covered by the
79 funds in their student's ESA. However, no parent or other individual shall make personal deposits into
80 an ESA.

81 G. Funds deposited in an ESA do not constitute taxable income to the ESA student or the ESA
82 student's parent.

83 H. An ESA shall remain in force, and any unused funds shall roll over from quarter to quarter and
84 from year to year, until the parent withdraws the ESA student from the Program or the ESA student
85 graduates from college with a bachelor's degree or unless the ESA is closed because of a substantial
86 misuse of funds. However, if an ESA student has not enrolled in an institution of higher education
87 within four years after graduating from high school or by the time the ESA student turns 26 years old,
88 whichever occurs first, the ESA shall be closed, and any unused funds shall revert to the Department
89 and be allocated to fund other ESAs.

90 I. Nothing in this article shall be construed to require an ESA student to be enrolled, full time or
91 part time, in either a private school or nonpublic online learning program.

92 **§ 22.1-222.3. Application for an Education Savings Account.**

93 A. Any parent of an eligible student may apply to the Department to establish an ESA for such
94 student.

95 B. The Department shall accept and approve applications year-round and shall establish procedures
96 for approving applications in an expeditious manner.

97 C. The Department shall create a standard form that parents can submit to establish their student's
98 eligibility for the Program and shall ensure that the application is publicly available and may be
99 submitted through various sources, including the Internet.

100 D. The Department shall approve an application for an ESA if:

101 1. The parent submits an application for an ESA in accordance with any application procedures
102 established by the Department;

103 2. The student on whose behalf the parent is applying is an eligible student;

104 3. Funds are available for the ESA; and

105 4. The parent signs an agreement with the Department promising (i) to provide an education for the
106 eligible student in at least the subjects of reading, language, mathematics, science, and social studies;
107 (ii) not to enroll the eligible student as a full-time student in a public school while participating in the
108 Program; (iii) to use the funds in the ESA only for qualifying expenses set forth in subsection C of
109 § 22.1-222.2; and (iv) to comply with the rules and requirements of the Program.

110 E. The signed agreement between the parent and the Department shall satisfy the compulsory school
111 attendance requirements of § 22.1-254.

112 F. The Department shall annually renew an ESA student's ESA if funds are available.

113 G. Upon notice to the Department, an ESA student may choose to stop receiving ESA funding and
114 enroll full time in a public school. Enrolling full time in a public school shall result in the immediate
115 suspension of payment of additional funds into the student's ESA. For any such ESA that has been open
116 for at least one full school year, the ESA shall remain open and active for the parent to make qualifying
117 expenditures to educate the student from funds remaining in the ESA and the Department may close the
118 ESA when all such remaining funds have been used. If an eligible student decides to return to the
119 Program, payments into the student's existing ESA may resume if the ESA is still open and active and a
120 new ESA may be established if the student's ESA was closed. The Department may adopt rules and

121 policies to provide the least disruptive process for ESA students who desire to stop receiving ESA
122 funding and enroll full time in a public school.

123 **§ 22.1-222.4. Additional duties and powers of the Department.**

124 A. In addition to the duties of the Department that are otherwise set forth in this article, the
125 Department shall:

126 1. Maintain an updated list of education service providers and ensure that the list is publicly
127 available through various sources, including the Internet;

128 2. Provide parents with a written explanation of the allowable uses of ESA funds, the responsibilities
129 of parents, the duties of the Department, and the role of any private financial management firms or
130 other private organizations with which the Department may contract to carry out all or any portion of
131 the Program;

132 3. Ensure that parents of students with disabilities receive notice that participation in the Program is
133 a parental placement under 20 U.S.C. § 1412 an explanation of the rights that parentally placed
134 students possess under the federal Individuals with Disabilities Education Act (20 U.S.C. § 1400 et seq.)
135 and any applicable state laws and regulations;

136 4. Contract with private institutions to develop and implement a commercially viable, cost-effective,
137 and parent-friendly system for payment of services from ESAs to education service providers by
138 electronic or online funds transfer. The Department shall not adopt a payment system that relies
139 exclusively on requiring parents to be reimbursed for out-of-pocket expenses but rather shall provide
140 maximum flexibility to parents by facilitating direct payments to education service providers and
141 requests for pre-approval of and reimbursements for qualifying expenses, including expenses pursuant to
142 subdivision C 15 of § 22.1-222.2;

143 5. Seek to implement a commercially viable, cost-effective, and parent-friendly system for parents to
144 publicly rate, review, and share information about education service providers, ideally as part of the
145 payment system established pursuant to subdivision 4 to create a one-stop shop for parents and ESA
146 students;

147 6. Continue making deposits into a student's ESA until (i) the Department determines that the ESA
148 student is no longer an eligible student, (ii) the Department determines that there was substantial misuse
149 of the funds in the ESA, (iii) the parent or ESA student withdraws from the Program, (iv) the ESA
150 student enrolls full-time in a public school, or (v) the ESA student graduates from high school;

151 7. Establish procedures to ensure that a fair process exists to determine whether an education
152 service provider shall be barred from receiving payments from ESAs. The Department may bar an
153 education service provider from receiving payments from ESAs if the Department determines that the
154 education service provider has (i) intentionally and substantially misrepresented information or failed to
155 refund any overpayments in a timely manner or (ii) routinely failed to provide students with promised
156 educational goods or services. If the Department bars an education service provider from receiving
157 payments from ESAs, it shall notify parents and ESA students of its decision as quickly as possible. Any
158 education service provider may appeal the Department's decision to bar the provider from receiving
159 payments from ESAs; and

160 8. Conduct random audits of ESAs on an annual basis. The Department may audit or contract for
161 the auditing of additional individual ESAs.

162 B. In addition to the powers of the Department that are otherwise set forth in this article, the
163 Department may:

164 1. With the prior approval of the General Assembly, contract with private organizations to
165 administer the Program or specific functions of the Program, including contracting with private
166 financial management firms to manage ESAs;

167 2. Withhold from depositing in or deduct from ESAs an amount to cover the costs of administering
168 the Program, up to five percent annually in the first two years of the Program and up to three percent
169 annually thereafter;

170 3. Pay, prior to the start of the school year in which the ESA is awarded and deduct in an equitable
171 manner from subsequent quarterly ESA deposits to ensure adequate funds remain available throughout
172 the school year, any partial payment of tuition or fees required by an education service provider prior
173 to the start of the academic year to reserve space for an admitted ESA student. If such student decides
174 not to enroll with such education service provider, the provider shall return such partial reservation
175 payment to the Department and the payment shall be credited to the student's ESA;

176 4. Declare any parent or ESA student ineligible for the Program in the event of intentional and
177 substantial misuse of ESA funds, provided that it has established procedures to ensure that a fair
178 process exists to determine whether an intentional and substantial misuse of ESA funds has occurred,
179 including an opportunity for the parent or ESA student to appeal such a declaration of ineligibility. If
180 an ESA student is free from personal misconduct, that student shall be eligible for an ESA in the future
181 if placed with a new guardian or other person with the legal authority to act on behalf of the student.

182 *The Department may also refer suspected cases of intentional and substantial misuse of ESA funds to*
183 *the Office of the Attorney General for investigation if evidence of fraudulent use of ESA funds is*
184 *obtained;*

185 *5. Accept gifts and grants from any source to cover administrative costs of the Program, inform the*
186 *public about the Program, or fund additional ESAs; and*

187 *6. Adopt rules, policies, or procedures that are not inconsistent with this article and that are*
188 *necessary for the administration of the Program, including rules, policies, or procedures (i) establishing*
189 *or contracting for the establishment of an online confidential fraud reporting service, (ii) establishing a*
190 *confidential telephone hotline for fraud reporting, (iii) requiring a surety bond for education service*
191 *providers receiving more than \$100,000 in ESA funds; and (iv) refunding payments from education*
192 *service providers back to ESAs. Any rules, policies, or procedures adopted by the Department for the*
193 *Program shall avoid excessive bureaucracy and overly prescriptive mandates and shall instead focus on*
194 *easing parental involvement and encouraging education service providers to provide parents and ESA*
195 *students with a broad array of educational options.*

196 **§ 22.1-222.5. Parent Review Commission.**

197 *A. There is hereby established the Parent Review Commission to assist the Department in*
198 *determining whether questionable expenditures meet the requirements to be considered qualifying*
199 *expenses to educate the ESA student pursuant to subsection C of § 22.1-222.2 and to provide*
200 *recommendations to the Department about how to implement, administer, and improve the Program.*

201 *B. The Parent Review Commission shall consist of (i) seven parents of ESA students who represent*
202 *no fewer than four local school divisions, none of whom are employees of the Commonwealth or any*
203 *public or private school, and who are appointed by the Superintendent to one-year terms and (ii) the*
204 *Superintendent, who shall serve as the ex officio nonvoting chairman.*

205 *C. The Department may request the Commission to meet, in person or virtually, to (i) determine, by*
206 *majority vote, whether a questionable expenditure or proposed expenditure of ESA funds is a qualifying*
207 *expense pursuant to subsection C of 22.1-222.2 or (ii) review and make recommendations to the*
208 *Department on appeals of decisions to bar education service providers pursuant to subdivision A 7 of §*
209 *22.1-222.4.*

210 **§ 22.1-222.6. Requirements for education service providers.**

211 *A. The Department may approve education service providers on its own initiative or at the request of*
212 *parents or prospective education service providers.*

213 *B. A prospective education service provider that wishes to receive payments from ESAs shall:*

214 *1. Submit notice to the Department that it wishes to receive payments from ESAs; and*

215 *2. Agree not to refund to, rebate to, or share with parents or ESA students any ESA funds in any*
216 *manner, except that funds may be remitted or refunded to an ESA in accordance with procedures*
217 *established by the Department.*

218 **§ 22.1-222.7. Independence of education service providers.**

219 *A. Nothing in this article shall be deemed to limit the independence or autonomy of an education*
220 *service provider or to make the actions of an education service provider the actions of the*
221 *Commonwealth or any political subdivision thereof.*

222 *B. Education service providers shall be given maximum freedom to provide for the educational needs*
223 *of ESA students without governmental control.*

224 *C. Nothing in this article shall be construed to expand the regulatory authority of the Commonwealth*
225 *or its officers or any local school division to impose any additional regulation of education service*
226 *providers beyond those regulations necessary to enforce the requirements of the Program.*

227 *D. An education service provider that accepts payment from an ESA pursuant to this article is not*
228 *an agent of the state or federal government.*

229 *E. An education service provider shall not be required to alter its creed, practices, admissions*
230 *policy, or curriculum to accept payments from an ESA.*

231 **§ 22.1-222.8. Responsibilities of public schools and local school divisions; student records.**

232 *Each public school and local school division that previously enrolled an ESA student shall provide a*
233 *private school that is an education service provider and that has enrolled an ESA student with a*
234 *complete copy of the ESA student's school records in a manner that is consistent with the federal Family*
235 *Educational Rights and Privacy Act of 1974 (20 U.S.C. § 1232g).*

236 **§ 22.1-222.9. Legal proceedings.**

237 *A. In any legal proceeding challenging the application of this article to an education service*
238 *provider, the Commonwealth bears the burden of establishing that the law is necessary and does not*
239 *impose any undue burden on the education service provider.*

240 *B. No liability shall arise on the part of the Commonwealth, the Department, or any public school or*
241 *local school division based on the award of or use of an ESA pursuant to this article.*

242 *C. If any part of this article is challenged in a state court as violating either the state or federal*
243 *constitutions, parents of eligible students or ESA students shall be permitted to intervene as of right in*

244 *such lawsuit for the purposes of defending the Program's constitutionality. However, for the purposes of*
 245 *judicial administration, a court may require that all parents file a joint brief, so long as they are not*
 246 *required to join any brief filed on behalf of any named state defendant.*

247 **§ 22.1-254.1. Declaration of policy; requirements for home instruction of children.**

248 A. When the requirements of this section have been satisfied, instruction of children by their parents
 249 is an acceptable alternative form of education under the policy of the Commonwealth of Virginia. Any
 250 parent of any child who will have reached the fifth birthday on or before September 30 of any school
 251 year and who has not passed the eighteenth birthday may elect to provide home instruction in lieu of
 252 school attendance if he (i) holds a high school diploma; (ii) is a teacher of qualifications prescribed by
 253 the Board of Education; (iii) provides the child with a program of study or curriculum ~~which~~ *that* may
 254 be delivered through a correspondence course or distance learning program, *pursuant to the Education*
 255 *Savings Account Program established in Article 2.1 (§ 22.1-222.1 et seq.) of Chapter 13*, or in any other
 256 manner; or (iv) provides evidence that he is able to provide an adequate education for the child.

257 B. Any parent who elects to provide home instruction in lieu of school attendance shall annually
 258 notify the division superintendent in August of his intention to so instruct the child and provide a
 259 description of the curriculum, limited to a list of subjects to be studied during the coming year, and
 260 evidence of having met one of the criteria for providing home instruction as required by subsection A.
 261 Effective July 1, 2000, parents electing to provide home instruction shall provide such annual notice no
 262 later than August 15. Any parent who moves into a school division or begins home instruction after the
 263 school year has begun shall notify the division superintendent of his intention to provide home
 264 instruction as soon as practicable and shall thereafter comply with the requirements of this section within
 265 30 days of such notice. The division superintendent shall notify the Superintendent of Public Instruction
 266 of the number of students in the school division receiving home instruction.

267 C. The parent who elects to provide home instruction shall provide the division superintendent by
 268 August 1 following the school year in which the child has received home instruction with either (i)
 269 evidence that the child has attained a composite score in or above the fourth stanine on any nationally
 270 normed standardized achievement test, or an equivalent score on the ACT, SAT, or PSAT test or (ii) an
 271 evaluation or assessment which the division superintendent determines to indicate that the child is
 272 achieving an adequate level of educational growth and progress, including but not limited to (a) an
 273 evaluation letter from a person licensed to teach in any state, or a person with a master's degree or
 274 higher in an academic discipline, having knowledge of the child's academic progress, stating that the
 275 child is achieving an adequate level of educational growth and progress or (b) a report card or transcript
 276 from an institution of higher education, college distance learning program, or home-education
 277 correspondence school.

278 In the event that evidence of progress as required in this subsection is not provided by the parent, the
 279 home instruction program for that child may be placed on probation for one year. Parents shall file with
 280 the division superintendent evidence of their ability to provide an adequate education for their child in
 281 compliance with subsection A and a remediation plan for the probationary year which indicates their
 282 program is designed to address any educational deficiency. Upon acceptance of such evidence and plan
 283 by the division superintendent, the home instruction may continue for one probationary year. If the
 284 remediation plan and evidence are not accepted or the required evidence of progress is not provided by
 285 August 1 following the probationary year, home instruction shall cease and the parent shall make other
 286 arrangements for the education of the child which comply with § 22.1-254. The requirements of
 287 subsection C shall not apply to children who are under the age of six as of September 30 of the school
 288 year.

289 D. Nothing in this section shall prohibit a pupil and his parents from obtaining an excuse from
 290 school attendance by reason of bona fide religious training or belief pursuant to subdivision B 1 of
 291 § 22.1-254.

292 E. Any party aggrieved by a decision of the division superintendent may appeal his decision within
 293 30 days to an independent hearing officer. The independent hearing officer shall be chosen from the list
 294 maintained by the Executive Secretary of the Supreme Court for hearing appeals of the placements of
 295 children with disabilities. The costs of the hearing shall be apportioned among the parties by the hearing
 296 officer in a manner consistent with his findings.

297 F. School boards shall make Advanced Placement (AP), Preliminary SAT/National Merit Scholarship
 298 Qualifying Test (PSAT/NMSQT), and PreACT examinations available to students receiving home
 299 instruction pursuant to this section. School boards shall adopt written policies that specify the date by
 300 which such students shall register to participate in such examinations. School boards shall notify such
 301 students and their parents of such registration deadline and the availability of financial assistance to
 302 low-income and needy students to take such examinations.

303 G. No division superintendent or local school board shall disclose to the Department of Education or
 304 any other person or entity outside of the local school division information that is provided by a parent

305 or student to satisfy the requirements of this section or subdivision B 1 of § 22.1-254. However, a
 306 division superintendent or local school board may disclose, with the written consent of a student's
 307 parent, such information to the extent provided by the parent's consent. Nothing in this subsection shall
 308 prohibit a division superintendent from notifying the Superintendent of Public Instruction of the number
 309 of students in the school division receiving home instruction as required by subsection B.

310 **§ 58.1-439.25. (Applicable to taxable years beginning before January 1, 2024) Definitions.**

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

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

323 "Eligible student with a disability" means a child who is a resident of Virginia for whom an
 324 Individualized Education Plan (IEP) has been written and finalized in accordance with the federal
 325 Individuals with Disabilities Education Act (IDEA), regulations promulgated pursuant to IDEA, and
 326 regulations of the Board of Education. For purposes of this article, an eligible student with a disability
 327 need not qualify as a student as defined in this section.

328 "*Free lunch standards*" means the income standards used to qualify for a free or reduced-price lunch
 329 under the national free or reduced-price lunch program established under 42 U.S.C. § 1751 et seq.

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

339 "Poverty guidelines" means the poverty guidelines for the 48 contiguous states and the District of
 340 Columbia updated annually in the Federal Register by the U.S. Department of Health and Human
 341 Services under the authority of § 673(2) of the Omnibus Budget Reconciliation Act of 1981, *or a*
 342 *poverty measure approved by the Department that incorporates regional differences in cost of living.*

343 "Qualified educational expenses" means school-related tuition and instructional fees and materials,
 344 including textbooks, workbooks, and supplies used solely for school-related work, *and any other*
 345 *educational expense approved by a scholarship foundation.*

346 "Scholarship foundation" means a nonstock, nonprofit corporation that is (i) exempt from taxation
 347 under § 501(c)(3) of the Internal Revenue Code of 1954, as amended or renumbered; (ii) approved by
 348 the Department of Education in accordance with the provisions of § 58.1-439.27; and (iii) established to
 349 provide financial aid for the education of students or eligible students with a disability residing in the
 350 Commonwealth.

351 "Student" means a child who is a resident of Virginia and (i) in the current school year has enrolled
 352 and attended a public school in the Commonwealth for at least one-half of the year, (ii) for the school
 353 year that immediately preceded his receipt of a scholarship foundation scholarship was enrolled and
 354 attended a public school in the Commonwealth for at least one-half of the year, (iii) is a prior recipient
 355 of a scholarship foundation scholarship, (iv) is eligible to enter kindergarten or eligible to enter first
 356 grade, or (v) for the school year that immediately preceded his receipt of a scholarship foundation
 357 scholarship was domiciled in a state other than the Commonwealth and did not attend a nonpublic
 358 school in the Commonwealth for more than one-half of the school year. "Student" does not include an
 359 eligible pre-kindergarten child.

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

363 **§ 58.1-439.25. (Applicable to taxable years beginning January 1, 2024) Definitions.**

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

365 "Eligible pre-kindergarten child" means a child who is (i) a resident of Virginia; (ii) an at-risk
 366 four-year-old unable to obtain services through Head Start or Virginia Preschool Initiative programs; and

367 (iii) enrolled in, eligible to attend, or attending a nonpublic pre-kindergarten program and whose family
 368 (a) does not have an annual household income in excess of 300 percent of the current poverty guidelines
 369 or 400 percent of such guidelines in cases in which an individualized education program has been
 370 written and finalized for the child in accordance with the federal Individuals with Disabilities Education
 371 Act (IDEA), regulations promulgated pursuant to IDEA, and regulations of the Board of Education; (b)
 372 is homeless as defined in 42 U.S.C. § 11302; or (c) includes a parent or guardian of the child who did
 373 not graduate from high school, and whose parent or guardian certifies to the scholarship foundation that
 374 the child was unable to obtain services through the Virginia Preschool Initiative in the public school
 375 division in which the child resides.

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

381 "*Free lunch standards*" means the income standards used to qualify for a free or reduced-price lunch
 382 under the national free or reduced-price lunch program established under 42 U.S.C. § 1751 et seq.

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

392 "Poverty guidelines" means the poverty guidelines for the 48 contiguous states and the District of
 393 Columbia updated annually in the Federal Register by the U.S. Department of Health and Human
 394 Services under the authority of § 673(2) of the Omnibus Budget Reconciliation Act of 1981, or a
 395 poverty measure approved by the Department that incorporates regional differences in cost of living.

396 "Qualified educational expenses" means school-related tuition and instructional fees and materials,
 397 including textbooks, workbooks, and supplies used solely for school-related work, and any other
 398 educational expense approved by a scholarship foundation.

399 "Scholarship foundation" means a nonstock, nonprofit corporation that is (i) exempt from taxation
 400 under § 501(c)(3) of the Internal Revenue Code of 1954, as amended or renumbered; (ii) approved by
 401 the Department of Education in accordance with the provisions of § 58.1-439.27; and (iii) established to
 402 provide financial aid for the education of students residing in the Commonwealth.

403 "Student" means a child who is a resident of Virginia and (i) in the current school year has enrolled
 404 and attended a public school in the Commonwealth for at least one-half of the year, (ii) for the school
 405 year that immediately preceded his receipt of a scholarship foundation scholarship was enrolled and
 406 attended a public school in the Commonwealth for at least one-half of the year, (iii) is a prior recipient
 407 of a scholarship foundation scholarship, (iv) is eligible to enter kindergarten or eligible to enter first
 408 grade, or (v) for the school year that immediately preceded his receipt of a scholarship foundation
 409 scholarship was domiciled in a state other than the Commonwealth and did not attend a nonpublic
 410 school in the Commonwealth for more than one-half of the school year. "Student" does not include an
 411 eligible pre-kindergarten child is eligible to enroll in a primary or secondary public school in Virginia.

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

415 **§ 58.1-439.26. Tax credit for donations to certain scholarship foundations.**

416 A. Notwithstanding the provisions of § 30-19.1:11, for taxable years beginning on or after January 1,
 417 2013, but before January 1, 2028, a person shall be eligible to earn a credit against any tax due under
 418 Article 2 (§ 58.1-320 et seq.) or Article 10 (§ 58.1-400 et seq.), Chapter 12 (§ 58.1-1200 et seq.),
 419 Chapter 25 (§ 58.1-2500 et seq.), or Article 2 (§ 58.1-2620 et seq.) of Chapter 26 in an amount equal to
 420 65 100 percent of the value of the monetary or marketable securities donation made by the person to a
 421 scholarship foundation included on the list published annually by the Department of Education in
 422 accordance with the provisions of § 58.1-439.28.

423 No tax credit shall be allowed under this article if the value of the monetary or marketable securities
 424 donation made by an individual is less than \$500. In addition, tax credits shall be issued only for the
 425 first \$125,000 in value of donations made by the individual during the taxable year. The maximum
 426 aggregate donations of \$125,000 for the taxable year for which tax credits may be issued and the
 427 minimum required donation of \$500 shall apply on an individual basis. Such limitation on the maximum

428 amount of tax credits issued to an individual shall not apply to credits issued to any business entity,
429 including a sole proprietorship.

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

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

435 2. The amount of the credit shall not exceed the person's tax liability pursuant to Article 2
436 (§ 58.1-320 et seq.) or Article 10 (§ 58.1-400 et seq.), Chapter 12 (§ 58.1-1200 et seq.), Chapter 25
437 (§ 58.1-2500 et seq.), or Article 2 (§ 58.1-2620 et seq.) of Chapter 26, as applicable, for the taxable year
438 for which the credit is claimed. Any credit not usable for the taxable year for which first allowed may
439 be carried over for credit against the taxes imposed upon the person pursuant to Article 2 (§ 58.1-320 et
440 seq.) or Article 10 (§ 58.1-400 et seq.), Chapter 12 (§ 58.1-1200 et seq.), Chapter 25 (§ 58.1-2500 et
441 seq.), or Article 2 (§ 58.1-2620 et seq.) of Chapter 26, as applicable, in the next five succeeding taxable
442 years or until the total amount of the tax credit has been taken, whichever is sooner.

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

446 C. In a form approved by the Department of Education, the person seeking to make a monetary or
447 marketable securities donation to a scholarship foundation or a scholarship foundation on behalf of such
448 person shall request preauthorization for a specified tax credit amount from the Superintendent of Public
449 Instruction. The Department of Education's preauthorization notice shall accompany the monetary or
450 marketable securities donation from the person to the scholarship foundation, which shall, within 40
451 days, return the notice to the Department of Education certifying the value and type of donation and
452 date received. Upon receipt and approval by the Department of Education of the preauthorization notice
453 with required supporting documentation and certification of the value and type of the donation by the
454 scholarship foundation, the Superintendent of Public Instruction shall as soon as practicable, and in no
455 case longer than 30 days, issue a tax credit certificate to the person eligible for the tax credit. The
456 person shall attach the tax credit certificate to the applicable tax return filed with the Department of
457 Taxation or the State Corporation Commission, as applicable. The Department of Education shall
458 provide a copy of the tax credit certificate to the scholarship foundation.

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

462 **§ 58.1-439.28. (Applicable to taxable years beginning before January 1, 2024) Guidelines for**
463 **scholarship foundations.**

464 A. As a condition for qualification by the Department of Education, a scholarship foundation, as
465 defined in § 58.1-439.25 and included on the list published annually by the Department of Education
466 pursuant to this section, shall disburse an amount at least equal to 90 percent of the value of the
467 donations it receives (for which tax credits were issued under this article) during each 12-month period
468 ending on June 30 by the immediately following June 30 for qualified educational expenses through
469 scholarships to students or eligible students with a disability. Tax-credit-derived funds not used for such
470 scholarships may only be used for the administrative expenses of the scholarship foundation. Any
471 scholarship foundation that fails to meet such disbursement requirement shall, for the first offense, be
472 required to pay a civil penalty equal to the difference between 90 percent of the value of the
473 tax-credit-derived donations it received in the applicable 12-month period and the amount that was
474 actually disbursed. Such civil penalty shall be remitted by the scholarship foundation to the Department
475 of Education within 30 days after the end of the one-year period and deposited to the general fund. For
476 a second offense within a five-year period, the scholarship foundation shall be removed from the annual
477 list published pursuant to this section and shall not be entitled to request preauthorization for additional
478 tax credits, nor shall it be entitled to receive and administer additional tax-credit-derived funds for two
479 years. After two years, the scholarship foundation shall be eligible to reapply to be included on the
480 annual list to receive and administer tax-credit derived funds. If a scholarship foundation is authorized to
481 be added to the annual list after such reapplication, the scholarship foundation shall not be considered to
482 have any previous offenses for purposes of this subsection. The required disbursement under this section
483 shall begin with donations received for the period January 1, 2013, through June 30, 2014.

484 B. By September 30 of each year beginning in 2016, the scholarship foundation shall provide the
485 following information to the Department of Education: (i) the total number and value of donations
486 received by the foundation during the 12-month period ending on June 30 of the prior calendar year for
487 which tax credits were issued by the Superintendent of Public Instruction, (ii) the dates when such
488 donations were received, and (iii) the total number and dollar amount of qualified educational expenses
489 scholarships awarded from tax-credit-derived donations and disbursed by the scholarship foundation

490 during the 24-month period ending on June 30 of the current calendar year. Any scholarship foundation
 491 that fails to provide this report by September 30 shall, for the first offense, be required to pay a \$1,000
 492 civil penalty. Such civil penalty shall be remitted by the scholarship foundation to the Department of
 493 Education by November 1 of the same year and deposited to the general fund. For a second offense
 494 within a five-year period, the scholarship foundation shall be removed from the annual list published
 495 pursuant to this section and shall not be entitled to request preauthorization for additional tax credits,
 496 nor shall it be entitled to receive and administer additional tax-credit-derived funds. After two years, the
 497 scholarship foundation shall be eligible to reapply to be included on the annual list to receive and
 498 administer tax-credit derived funds. If a scholarship foundation is authorized to be added to the annual
 499 list after such reapplication, the scholarship foundation shall not be considered to have any previous
 500 offenses for purposes of this subsection.

501 C. In awarding scholarships from tax-credit-derived funds, the scholarship foundation shall (i)
 502 provide scholarships for qualified educational expenses only to students whose family's annual household
 503 income is not in excess of ~~300~~ 1,000 percent of ~~the current poverty guidelines free lunch standards,~~
 504 eligible students with a disability whose family's annual household income is not in excess of 400
 505 ~~percent of the current poverty guidelines~~ 1,200 percent of free lunch standards, or eligible
 506 pre-kindergarten children; (ii) not limit scholarships to students or eligible students with a disability of
 507 one school; and (iii) comply with Title VI of the Civil Rights Act of 1964, as amended. Payment of
 508 scholarships from tax-credit-derived funds by the eligible scholarship foundation shall be by individual
 509 warrant or check made payable to and mailed to the eligible school that the parent or legal guardian of
 510 the student or eligible student with a disability indicates. In mailing such scholarship payments, the
 511 eligible scholarship foundation shall include a written notice to the eligible school that the source of the
 512 scholarship was donations made by persons receiving tax credits for the same pursuant to this article. *A*
 513 *scholarship foundation shall prioritize scholarship awards based on the student's parents' demonstrated*
 514 *financial need.*

515 D. 1. Scholarship foundations shall ensure that schools selected by students or eligible students with
 516 a disability to which tax-credit-derived funds may be paid (i) are in compliance with the
 517 Commonwealth's and locality's health and safety laws and codes; (ii) hold a valid occupancy permit as
 518 required by the locality; (iii) comply with Title VI of the Civil Rights Act of 1964, as amended; and
 519 (iv) are (a) for students in grades K through 12, nonpublic schools that comply with nonpublic school
 520 accreditation requirements as set forth in § 22.1-19 and administered by the Virginia Council for Private
 521 Education or nonpublic schools that maintain an assessment system that annually measures the progress
 522 of scholarship students or eligible students with a disability in reading and math using a national
 523 norm-referenced achievement test, including but not limited to the Stanford Achievement Test, California
 524 Achievement Test, and Iowa Test of Basic Skills and (b) for eligible pre-kindergarten children,
 525 nonpublic pre-kindergarten programs.

526 2. Each nonpublic pre-kindergarten program shall (i) provide to the eligible pre-kindergarten child a
 527 curriculum that is aligned with Virginia's Foundation Blocks for Early Learning: Comprehensive
 528 Standards for Four-Year-Olds as published by the Department of Education, or any successor standards
 529 published by the Department of Education; (ii) have maximum class sizes of 20 students with a
 530 teacher-student ratio of not fewer than two teachers for every 20 students; (iii) provide at least half-day
 531 services and operate for at least the school year; (iv) agree to provide the Department of Education with
 532 student information for each eligible pre-kindergarten child receiving a scholarship foundation
 533 scholarship for purposes of allowing the Department of Education to conduct studies comparing the
 534 academic performance of such children while attending primary or secondary school with other children
 535 attending primary or secondary school who have attended a pre-kindergarten program, including
 536 programs funded under the Virginia Preschool Initiative; and (v) require professional development of
 537 program teachers, which enables such teachers to engage in high-quality interactions with eligible
 538 pre-kindergarten children and provide high-quality instruction in accordance with the curriculum
 539 described under clause (i). Each nonpublic pre-kindergarten program teacher at a minimum shall have
 540 earned a certificate from a nationally recognized early childhood education certificate program, including
 541 but not limited to any early childhood education program provided or sponsored by the Virginia
 542 Community College System.

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

547 3. Eligible schools shall compile the results of any national norm-referenced achievement test for
 548 each of its students or eligible students with a disability receiving tax-credit-derived scholarships and
 549 shall provide the respective parents or legal guardians of such students or eligible students with a
 550 disability with a copy of the results on an annual basis, beginning with the first year of testing of the

551 student or eligible student with a disability. Such schools also shall annually provide to the Department
552 of Education for each such student or eligible student with a disability the achievement test results,
553 beginning with the first year of testing of the student or eligible student with a disability, and
554 information that would allow the Department to aggregate the achievement test results by grade level,
555 gender, family income level, number of years of participation in the scholarship program, and race.
556 Beginning with the third year of testing and test-related data collection, the Department of Education
557 shall ensure that the achievement test results and associated learning gains are published on the
558 Department of Education's website in accordance with such classifications and in an aggregate form as
559 to prevent the identification of any student or eligible student with a disability. Eligible schools shall
560 annually provide to the Superintendent of Public Instruction graduation rates of its students or eligible
561 students with a disability participating in the scholarship program in a manner consistent with nationally
562 recognized standards. In publishing and disseminating achievement test results and other information, the
563 Superintendent of Public Instruction and the Department of Education shall ensure compliance with all
564 student privacy laws.

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

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

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

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

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

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

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

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

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

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

613 Superintendent of Public Instruction or the Department of Education shall be final and not subject to
614 review or appeal.

615 **§ 58.1-439.28. (Applicable to taxable years beginning January 1, 2024) Guidelines for**
616 **scholarship foundations.**

617 A. As a condition for qualification by the Department of Education, a scholarship foundation, as
618 defined in § 58.1-439.25 and included on the list published annually by the Department of Education
619 pursuant to this section, shall disburse an amount at least equal to 90 percent of the value of the
620 donations it receives (for which tax credits were issued under this article) during each 12-month period
621 ending on June 30 by the immediately following June 30 for qualified educational expenses through
622 scholarships to eligible students. Tax-credit-derived funds not used for such scholarships may only be
623 used for the administrative expenses of the scholarship foundation. Any scholarship foundation that fails
624 to meet such disbursement requirement shall, for the first offense, be required to pay a civil penalty equal to
625 the difference between 90 percent of the value of the tax-credit-derived donations it received in the
626 applicable 12-month period and the amount that was actually disbursed. Such civil penalty shall be
627 remitted by the scholarship foundation to the Department of Education within 30 days after the end of
628 the one-year period and deposited to the general fund. For a second offense within a five-year period,
629 the scholarship foundation shall be removed from the annual list published pursuant to this section and
630 shall not be entitled to request preauthorization for additional tax credits, nor shall it be entitled to
631 receive and administer additional tax-credit-derived funds for two years. After two years, the scholarship
632 foundation shall be eligible to reapply to be included on the annual list to receive and administer
633 tax-credit derived funds. If a scholarship foundation is authorized to be added to the annual list after
634 such reapplication, the scholarship foundation shall not be considered to have any previous offenses for
635 purposes of this subsection. The required disbursement under this section shall begin with donations
636 received for the period January 1, 2013, through June 30, 2014.

637 B. By September 30 of each year beginning in 2016, the scholarship foundation shall provide the
638 following information to the Department of Education: (i) the total number and value of donations
639 received by the foundation during the 12-month period ending on June 30 of the prior calendar year for
640 which tax credits were issued by the Superintendent of Public Instruction, (ii) the dates when such
641 donations were received, and (iii) the total number and dollar amount of qualified educational expenses
642 scholarships awarded from tax-credit-derived donations and disbursed by the scholarship foundation
643 during the 24-month period ending on June 30 of the current calendar year. Any scholarship foundation
644 that fails to provide this report by September 30 shall, for the first offense, be required to pay a \$1,000
645 civil penalty. Such civil penalty shall be remitted by the scholarship foundation to the Department of
646 Education by November 1 of the same year and deposited to the general fund. For a second offense
647 within a five-year period, the scholarship foundation shall be removed from the annual list published
648 pursuant to this section and shall not be entitled to request preauthorization for additional tax credits,
649 nor shall it be entitled to receive and administer additional tax-credit-derived funds. After two years, the
650 scholarship foundation shall be eligible to reapply to be included on the annual list to receive and
651 administer tax-credit derived funds. If a scholarship foundation is authorized to be added to the annual
652 list after such reapplication, the scholarship foundation shall not be considered to have any previous
653 offenses for purposes of this subsection.

654 C. In awarding scholarships from tax-credit-derived funds, the scholarship foundation shall (i)
655 provide scholarships for qualified educational expenses only to students whose family's annual household
656 income is not in excess of ~~300~~ *1,000* percent of ~~the current poverty guidelines free lunch standards,~~
657 *eligible students with a disability whose family's annual household income is not in excess of 1,200*
658 *percent of free lunch standards,* or eligible pre-kindergarten children; (ii) not limit scholarships to
659 students of one school; and (iii) comply with Title VI of the Civil Rights Act of 1964, as amended.
660 Payment of scholarships from tax-credit-derived funds by the eligible scholarship foundation shall be by
661 individual warrant or check made payable to and mailed to the eligible school that the student's parent
662 or legal guardian indicates. In mailing such scholarship payments, the eligible scholarship foundation
663 shall include a written notice to the eligible school that the source of the scholarship was donations
664 made by persons receiving tax credits for the same pursuant to this article. *A scholarship foundation*
665 *shall prioritize scholarship awards based on the student's parents' demonstrated financial need.*

666 D. 1. Scholarship foundations shall ensure that schools selected by students to which
667 tax-credit-derived funds may be paid (i) are in compliance with the Commonwealth's and locality's
668 health and safety laws and codes; (ii) hold a valid occupancy permit as required by the locality; (iii)
669 comply with Title VI of the Civil Rights Act of 1964, as amended; and (iv) are (a) for students in
670 grades K through 12, nonpublic schools that comply with nonpublic school accreditation requirements as
671 set forth in § 22.1-19 and administered by the Virginia Council for Private Education or nonpublic
672 schools that maintain an assessment system that annually measures scholarship students' progress in
673 reading and math using a national norm-referenced achievement test, including but not limited to the

674 Stanford Achievement Test, California Achievement Test, and Iowa Test of Basic Skills and (b) for
675 eligible pre-kindergarten children, nonpublic pre-kindergarten programs.

676 2. Each nonpublic pre-kindergarten program shall (i) provide to the eligible pre-kindergarten child a
677 curriculum that is aligned with Virginia's Foundation Blocks for Early Learning; Comprehensive
678 Standards for Four-Year-Olds as published by the Department of Education, or any successor standards
679 published by the Department of Education; (ii) have maximum class sizes of 20 students with a
680 teacher-student ratio of not fewer than two teachers for every 20 students; (iii) provide at least half-day
681 services and operate for at least the school year; (iv) agree to provide the Department of Education with
682 student information for each eligible pre-kindergarten child receiving a scholarship foundation
683 scholarship for purposes of allowing the Department of Education to conduct studies comparing the
684 academic performance of such children while attending primary or secondary school with other children
685 attending primary or secondary school who have attended a pre-kindergarten program, including
686 programs funded under the Virginia Preschool Initiative; and (v) require professional development of
687 program teachers, which enables such teachers to engage in high-quality interactions with eligible
688 pre-kindergarten children and provide high-quality instruction in accordance with the curriculum
689 described under clause (i). Each nonpublic pre-kindergarten program teacher at a minimum shall have
690 earned a certificate from a nationally recognized early childhood education certificate program, including
691 but not limited to any early childhood education program provided or sponsored by the Virginia
692 Community College System.

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

697 3. Eligible schools shall compile the results of any national norm-referenced achievement test for
698 each of its students receiving tax-credit-derived scholarships and shall provide the respective parents or
699 legal guardians of such students with a copy of the results on an annual basis, beginning with the first
700 year of testing of the student. Such schools also shall annually provide to the Department of Education
701 for each such student the achievement test results, beginning with the first year of testing of the student,
702 and student information that would allow the Department to aggregate the achievement test results by
703 grade level, gender, family income level, number of years of participation in the scholarship program,
704 and race. Beginning with the third year of testing of each such student and test-related data collection,
705 the Department of Education shall ensure that the achievement test results and associated learning gains
706 are published on the Department of Education's website in accordance with such classifications and in an
707 aggregate form as to prevent the identification of any student. Eligible schools shall annually provide to
708 the Superintendent of Public Instruction graduation rates of its students participating in the scholarship
709 program in a manner consistent with nationally recognized standards. In publishing and disseminating
710 achievement test results and other information, the Superintendent of Public Instruction and the
711 Department of Education shall ensure compliance with all student privacy laws.

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

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

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

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

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

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

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

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

748 **2. That the provisions of this act amending §§ 58.1-439.25, 58.1-439.26, and 58.1-439.28 of the**
749 **Code of Virginia shall apply to all taxable years beginning on or after January 1, 2022.**

750 **3. That Article 2.1 (§ 22.1-222.1 et seq.) of Chapter 13 of Title 22.1 of the Code of Virginia, as**
751 **created by this act, shall be fully implemented in advance of the beginning of the 2022-2023 school**
752 **year.**