WEST VIRGINIA LEGISLATURE

**FISCAL NOTE**

2024 REGULAR SESSION

Introduced

House Bill 5374

By Delegate Worrell

[Introduced January 31, 2024; Referred to the Committee on Finance]

A BILL to amend the Code of West Virginia, 1931, as amended by adding thereto a new article, designated §11-13NN-1, §11-13NN-2, and §11-13NN-3 creating a Strong Family Tax Credit to eligible charitable organizations that are exempt from federal income taxation under §501(c)(3) of the Internal Revenue Code and that are located in West Virginia providing services approved by the Department of Human Services; and providing that the State Tax Commissioner promulgate legislative rules regarding the applicability, method of claiming of the credit, recapture of the credit

Be it enacted by the Legislature of West Virginia:

ARTICLE 13NN. Strong family TAX CREDIT.

§11-13NN-1. Legislative purpose.

(a) The Legislature finds and declares that taxpayers making contributions to organizations that are designated by the Department Human Services as" Eligible charitable organization" means an organization eligible to receive funding under this section.

(b)"Eligible contribution" means a monetary contribution from a taxpayer, subject to the restrictions provided in this section, to an eligible charitable organization. The taxpayer making the contribution may not designate a specific child assisted by the eligible charitable organization as the beneficiary of the contribution.

(c)"Tax credit cap amount" means the maximum annual tax credit amount that the Department of Revenue may approve for a state fiscal year.

§11-13NN-2. Strong families tax credits; eligibility.

(a) The Department of Human Services shall designate as an eligible charitable organization an organization that meets all of the following requirements:

(1) Is exempt from federal income taxation under §501(c)(3) of the Internal Revenue Code.

(2) Is a West Virginia entity formed under Chapter 31 of this code and whose principal office is located in this state.

(3) Provides services to:

(i) Prevent child abuse, neglect, abandonment, or exploitation;

(ii) Assist fathers in learning and improving parenting skills or to engage absent fathers in being more engaged in their children’s lives;

(iii) Provide books to the homes of children eligible for a federal free or reduced-price meals program or those testing below grade level in kindergarten through grade 5;

(iv) Assist families with children who have a chronic illness or a physical, intellectual, developmental, or emotional disability; or

(v) Provide workforce development services to families of children eligible for a federal free or reduced-price meals program.

(4) Provides to the Department of Human Services accurate information, including, at a minimum, a description of the services provided by the organization which are eligible for funding under this section, the total number of individuals served through those services during the last calendar year and the number served during the last calendar year using funding under this section, basic financial information regarding the organization and services eligible for funding under this section; outcomes for such services, and contact information for the organization.

(5) Annually submits a statement, signed under penalty of perjury by a current officer of the organization, that the organization meets all criteria to qualify as an eligible charitable organization, has fulfilled responsibilities under this section for the previous fiscal year if the organization received any funding through this credit during the previous year, and intends to fulfill its responsibilities during the upcoming year.

(6) Provides any documentation requested by the Department of Human Services to verify eligibility as an eligible charitable organization or compliance with this section.

(b) The Department of Human Services may not designate as an eligible charitable organization an organization that:

(1) Provides abortions or pays for or provides coverage for abortions; or

(2) Has received more than 50 percent of its total annual revenue from the Department of Human Services, either directly or via a contractor of the department, in the prior fiscal year.

(3) Responsibilities of eligible charitable organizations. An eligible charitable organization that receives a contribution under this section shall do all of the following:

(a)Apply to the Secretary of the West Virginia Department of Human Services for eligibility as a charitable organization under this article and, if accepted, the secretary shall conduct background screening on all volunteers and staff working directly with children in any program funded under this section. Background screening shall use screening standards pursuant to the West Virginia Clearance for Access: Registry and Employment Screening Act in §16-49-1 *et seq*. of this code, and additionally include, but need not be limited to, a check of the Dru Sjodin National Sex Offender Public Website.

(b)Expend 100 percent of any contributions received under this section for direct services to state residents for the purposes specified in this section..

(c)Annually submit to the Department of Children and Families:

(1)An audit of the eligible charitable organization conducted by an independent certified public accountant in accordance with auditing standards generally accepted in the United States, government auditing standards, and rules adopted by the Auditor General. The audit report must include a report on financial statements presented in accordance with generally accepted accounting principles. The audit report must be provided to the Department of Children and Families within 180 days after completion of the eligible charitable organization’s fiscal year; and

(2)A copy of the eligible charitable organization’s most recent federal Internal Revenue Service Return of Organization Exempt from Income Tax form (Form 990).

(d) Notify the West Virginia Department of Human Services within five business days after the eligible charitable organization ceases to meet eligibility requirements or fails to fulfill its responsibilities under this section.

(e) Upon receipt of a contribution, provide the taxpayer that made the contribution with a certificate of contribution. Certificate of contribution must include the taxpayer’s name and, if available, its federal employer identification number, the amount contributed, the date of contribution, and the name of the eligible charitable organization.

(4) Responsibilities of theWest Virginia Department of Human Services. The department shall do all of the following:

(a) Annually redesignate eligible charitable organizations that have complied with all requirements of this section.

(b) Remove the designation of organizations that fail to meet all requirements of this section. An organization that has had its designation removed by the department may reapply for designation as an eligible charitable organization, and the requirements of this section and demonstrates through its application that all factors leading to its removal as an eligible charitable organization have been sufficiently addressed.

(c) Publish information about the tax credit program and eligible charitable organizations on a West Virginia Department of Human Services website. The website shall, at a minimum, provide all of the following:

(1) The requirements and process for becoming designated or redesignated as an eligible

charitable organization.

(2) A list of the eligible charitable organizations that are currently designated by the department and the information provided regarding each eligible charitable organization.

(3) The process for a taxpayer to select an eligible charitable organization as the recipient of funding through a tax credit.

(d) Compel the return of funds that are provided to an eligible charitable organization that fails to comply with the requirements of this section. Eligible charitable organizations that are subject to return of funds are ineligible to receive funding under this section for a period of 10 years after final agency action to compel the return of funding.

(5) Strong families tax credits; applications, transfers, and limitations:

(e) The Tax Commissioner shall propose rules for legislative approval in accordance with §29A-3-1 *et seq.* of this code relating to implementing the taxpayers obligations and procedures and application for tax credits under this article: *Provided*, That the rules comply with §11-13NN-2 of this code.

§11-13NN-3. Application of credit; limitation of credit; tax commissioner to promulgate forms and legislative rule; notice of credit.

(a) The credit allowed in this article shall be first applied to a taxpayer's business franchise tax liability, and then to either the taxpayer's personal income tax liability or corporation net income tax liability, as the case may be.

(b) The credit allowed in this article shall not exceed $10,000 per year and shall not be refundable, nor carried forward nor backward to other tax years.

(c) The State Tax Commissioner shall promulgate legislative rules pursuant to§29A-3-1 *et seq.* of this code regarding the applicability, method of claiming of the credit, recapture of the credit and documentation necessary to claim the credit herein allowed.

NOTE: The purpose of this bill is to create a Strong Family Tax Credit to eligible charitable organizations that are exempt from federal income taxation under §501(c)(3) of the Internal Revenue Code and that are located in West Virginia providing services approved by the Department of Health and Human Resources.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.