



COMMONWEALTH of VIRGINIA

STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

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MEMORANDUM

TO: Senate Committees on Finance and Appropriations and Education and Health, as well as the House Committees on Appropriations and Education

FROM: Sandra Freeman, Director, Private Postsecondary Education

DATE: October 28, 2025

SUBJECT: Evaluation of Potential Exemption for Certain Noncredit Instructional Programs under § 23.1-226 of the Code of Virginia

Introduction

The Virginia General Assembly, through House Bill 1995, directed the State Council of Higher Education for Virginia (SCHEV) to evaluate and make recommendations regarding potential amendments to § 23.1-226 of the Code of Virginia. Specifically, the directive concerns whether certain noncredit instructional programs—such as those designed for Scrum and Project Management Professional (PMP) certification—should be exempt from SCHEV's certification requirements for postsecondary institutions operating in the Commonwealth.

In response, SCHEV staff conducted a detailed review of (1) existing Virginia laws and regulations, (2) comparable provisions in other states and (3) the potential benefits and risks of creating such an exemption. This memorandum summarizes the findings of that evaluation and presents SCHEV's recommendations for the General Assembly's consideration.

I. General Assembly Directive

§ 1. That the State Council of Higher Education for Virginia (the Council) shall evaluate and make recommendations on amending § 23.1-226 of the Code of Virginia relating to certain activities and programs offered by private and out-of-

state postsecondary schools that are exempt from the requirements for obtaining and maintaining certification by the Council to operate in the Commonwealth set forth in Article 3 (§ 23.1-213 et seq.) of Chapter 2 of Title 23.1 of the Code of Virginia, to exempt noncredit courses of instruction offered by an entity or organization in accordance with the requirements of a nationally recognized certifying body, including certified Scrum courses and those intended solely to prepare students for certification as project management professionals, provided that no such exempted course of instruction shall exceed the number of hours required by the applicable certifying body.

SCHEV Response

- A. Staff research confirms there is already a certification exemption for schools that solely prepare students for the Project Management Professional (PMP) certification exam. [§ 23.1-226 (B)(9)(iii) Tutorial instruction delivered and designed to prepare an individual for an examination to demonstrate proficiency or to maintain proficiency in an occupational field.] The certifying body for Project Management Professionals requires candidates to have experience in project management prior to sitting for the exam.
- B. Staff research confirms there is no current exemption that would apply to Scrum programs. There is more than one certifying body providing Scrum certification and candidates are not required to have experience in the field prior to sitting for the exam.
- C. In considering a new exemption that would apply to Scrum, staff recommends that any exemption considered should not be phrased in terms of “credit” vs. “non-credit” instruction. This would undermine the principle in Virginia law that all postsecondary education requires certification. Thus, if an exemption is to be considered for Scrum programs, it should be based on other applicable factors.

II. General Assembly Directive

In conducting its evaluation, the Council shall (i) consider the potential benefits exempting such noncredit courses of instruction from such requirements; (ii) consider any unintended or negative consequences that may result from exempting such noncredit courses of instruction from such requirements; (iii) consider how other states certify, regulate, exempt from regulation or certification, or otherwise treat such noncredit courses of instruction; and (iv) make recommendations on whether the provisions of § 23.1-226 of the Code of Virginia should be amended to exempt such noncredit courses of instruction from such requirements or such requirements should otherwise be modified and, if so, on any considerations or concerns that should be taken into account in doing so.

SCHEV Response

A. How other states treat Scrum

1. Staff researched the laws and regulations of other states and found that the majority of states grant exemptions based on the same parameters as those found in Virginia law and regulation.
2. No state has established an exemption specific to Scrum.
3. Nine states have exemptions that are not recognized in Virginia. Statutes in these states provide exemptions for schools with “short” programs, “low cost” programs, or a combination of both. The maximum length and maximum costs for exemption eligibility are defined by each state. It is possible that Scrum programs in those states are exempt based on these statutes.

B. Potential benefits to establishing an exemption for Scrum

1. The scope of potential benefits is likely to be small. There are currently two certified schools that may qualify for exemption if Virginia were to create an exemption for Scrum. The extent to which additional schools would offer Scrum instruction if an exemption became available is unknown.

C. Unintended or Negative Consequences to establishing an exemption for Scrum

1. SCHEV-certified schools must adhere to approved refund, grievance and instructional policies that provide student protections against low quality and predatory practices. Exempting any programs from certification always poses a risk for enrolled students who would then not be covered by these protections.

Summary and Recommendations

HB 1995 directs SCHEV to “make recommendations on whether the provisions of § 23.1-226 of the Code of Virginia should be amended to exempt such noncredit courses of instruction from such requirements or such requirements should otherwise be modified and, if so, on any considerations or concerns that should be taken into account in doing so.” In deciding whether to make any recommendations to amend § 23.1-226 of the Code of Virginia, there are various considerations that should be considered; chief among them are the following:

1. The nature and extent of benefit to be conferred on schools by being able to operate with an exemption from SCHEV regulation.
2. Whether the commonwealth’s workforce and economic development needs are likely to be promoted by the envisioned exemption.
3. Whether students of programs operating under such an exemption are likely to be benefitted, harmed or indifferently affected, by the exemption.

4. Whether the envisioned exemption is consistent with good practice and, especially, with the overall principles motivating Virginia's higher education laws and regulations.

With regard to consideration #1, it seems clear that schools offering Scrum would consider themselves to be benefitted by an exemption that would relieve them of the cost and administrative effort involved in being regulated by SCHEV. On the other hand, there seem to be very few such providers, so it is unclear whether this benefit would itself have much of an impact since only a small handful of providers exist in the first place.

With regard to consideration #2, the currently known small scale of such programming indicates that whatever current general need there may be within Virginia's workforce and economic development ecosystem is also small. Indeed, SCHEV is unaware of any general call from industry for greater availability of Scrum training in Virginia. This does not mean that there may not be some extent of benefit to Virginia's workforce development if it becomes easier for providers to offer Scrum. Nevertheless, there is no evidence that the exemption would be serving a discernible state need.

With regard to consideration #3, the General Assembly should keep in mind that the envisioned exemption would, if enacted, put the students of such programs completely outside the scope of regulations that protect them from low quality and predatory practices. This is not to say that the schools teaching Scrum in Virginia have a history as bad actors; they do not. The question comes down to this: is it more important to relieve these proprietors of the burden of state regulation than to ensure their students have the same protections as students of regulated schools?

With regard to consideration #4, it should be possible to articulate an exemption that is sufficiently narrowly designed that it does not do violence to the fundamental purpose of Virginia's student protection laws and regulations. Whether such an exemption would be considered a "good practice" is a question without an obvious answer. What is more important, to relieve a small number of proprietors of the burden of regulation, or to preserve the access of their students to protections afforded by existing Virginia regulations?

Recommendation

If the General Assembly wishes to create an exemption for Scrum:

- The exemption should avoid terminology such as "noncredit courses of instruction" and "nationally recognized certifying body," since this terminology applies to entities that are required to certify.

- The exemption should be narrowly written so that it applies only to Scrum instruction. This is necessary to ensure that the exemption is not inadvertently applicable to other kinds of programs that are not mentioned by HB1995 and were therefore not studied by SCHEV.