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Final Analysis
Legislative Service Commission

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(As Passed by the General Assembly)

- Sens.** Gardner, Kearns, Schafrath, Shoemaker, Prentiss, Oelslager, Mumper, Cupp, Fingerhut, Spada, Nein, Drake, Latell, Watts, Hagan, Brady, DiDonato, White, Wachtmann, Armbruster, Latta
- Reps.** Allen, Austria, Barnes, Kilbane, Gerberry, Jacobson, D. Miller, Myers, Olman, Robinson, Salerno, Schuler, Stapleton, Trakas, Verich, Callender, Roman, Tiberi, Sulzer, Womer Benjamin, Terwilleger, Corbin, Willamowski, Van Vyven, Jones, Cates, Ford, Damschroder, Flannery, Clancy, Winkler, Hoops, Patton, Perry, Widener, Harris, Metzger, Buehrer, Wilson, Sykes, R. Miller, Hollister, Schuring, Mettler, Smith, Krupinski, DePiero, J. Beatty, Distel, Hartnett, Jolivette, O'Brien, Coughlin, Gardner, Householder, Buchy, Young, Mead, Redfern, Logan, Sullivan, Gooding, Barrett, Mottley, Britton

Effective date: *

ACT SUMMARY

- Requires the Ohio Tuition Trust Authority to establish a Variable College Savings Program.
- Allows a tax deduction of up to \$2,000 per beneficiary for purchases of tuition credits and contributions to Variable College Savings Program accounts.
- Provides for taxation of amounts previously deducted if such amounts are not distributed or refunded for specified purposes.
- Changes the method of calculating refunds of an existing college savings program account upon termination of the accounts in the case of death or permanent disability of the beneficiary.

* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared.*

- Expands the authority of Ohio to purchase federal education loans on the secondary market.
- Establishes the Ohio Outstanding Scholarship and Ohio Priority Needs Fellowship Programs, administered by the Board of Regents and the proposed Rules Advisory Committee, to offer scholarships and fellowships.

TABLE OF CONTENTS

VARIABLE COLLEGE SAVINGS PROGRAM

Background	3
Variable College Savings Program	3
Overview	3
Tax treatment	4
Administration of the program.....	5
Rule-making authority	8
Termination of contracts and refunds.....	8
Termination of the program	9
Miscellaneous.....	9
Change in refund policy under the continuing tuition credit program.....	10

OHIO PURCHASE OF EDUCATION LOANS ON SECONDARY MARKET

Expanding Ohio's authority to purchase federal education loans.....	10
Continuing law; former law	10
The act	11

SCHOLARSHIP AND FELLOWSHIP PROGRAMS

Outstanding Scholarship and Ohio Priority Needs Fellowship Programs	11
Overview	11
Purpose and establishment.....	12
Eligible recipients.....	12
Renewability	13
Rules Advisory Committee; establishment of guidelines for the programs	13
Funding; investment of funds	14

CONTENT AND OPERATION

VARIABLE COLLEGE SAVINGS PROGRAM

Background

Under continuing law, the Ohio Tuition Trust Authority operates a college savings program that allows a purchaser to acquire tuition credits under a tuition payment contract with the Authority. Under section 529 of the federal Internal Revenue Code, such programs receive favorable federal tax treatment for the programs' assets and distributions to beneficiaries if the program qualifies as a "qualified State tuition program." "Qualified State tuition program," under the federal law, means a program established and maintained by a state or agency or instrumentality thereof under which a person (1) may purchase tuition credits or certificates on behalf of a designated beneficiary that entitle the beneficiary to the waiver or payment of qualified higher education expenses of the beneficiary (as under the existing state tuition credit program), or (2) may make contributions to an account that is established for the purpose of meeting the qualified higher education expenses of the designated beneficiary of the account (as authorized under the act). The Ohio Tuition Trust Authority is authorized to operate as a qualified state tuition program within the meaning of section 529 of the Internal Revenue Code (R.C. 3334.03(A)--not in the act).

Variable College Savings Program

Overview

The act requires the Ohio Tuition Trust Authority to establish a Variable College Savings Program, which would supplement the continuing college savings program. This new program would permit a person to contribute moneys to a savings investment account owned by the contributor but held in trust by and managed under the auspices of the state in benefit of another person.¹ A beneficiary may use the moneys from such account to pay college tuition and other higher education expenses at an "institution of higher education."² Generally, the

¹ R.C. 3334.02(C). *The act defines "contributor" as "a person who signs a Variable College Savings Program contract with the Ohio Tuition Trust Authority and contributes to and owns the account created under the contract" (R.C. 3334.01(R)).*

² *For purposes of the newly authorized program, "beneficiary" is defined as "the individual whose tuition and other higher education expenses will be paid from a Variable College Savings Program account" (R.C. 3334.01(B)(2)).*

account would be invested by an agent of the state to provide a variable rate of return for the beneficiary. A contributor under the Variable College Savings Program may simultaneously participate as a purchaser in the continuing college savings program.³

Tax treatment

(R.C. 5741.01 and 5747.70; Section 6)

The act creates a deduction from the personal income tax for purchases of tuition credits and contributions to variable college savings program accounts to the extent that the amount of such purchases and contributions are included in federal adjusted gross income. The deduction is limited to a combined aggregate of \$2,000 per beneficiary per year for the taxpayer or the taxpayer and the taxpayer's spouse, regardless of whether the taxpayer and the taxpayer's spouse file separate returns or a joint return. Any excess may be carried forward to future years until the amount of the purchases and contributions is fully deducted.

If purchase or contribution amounts are distributed or refunded under a tuition payment or variable college savings program contract for any reason other than payment of higher education expenses or the beneficiary's death, disability, or receipt of a scholarship, the distributions or refunds are to be added to the recipient's adjusted gross income, to the extent (1) they are not already included in federal adjusted gross income, and (2) they were not required to be added back in a prior taxable year. If the distribution or refund is paid to someone other than the purchaser or contributor or beneficiary, which may be done pursuant to the contract, the requirement that the payment be added back in applies only to purchases and contributions made after the act's effective date. (Since purchases

Continuing law defines "institution of higher education" as a state institution of higher education, a private college, university, or other postsecondary institution located in Ohio that possesses either a certificate of authorization issued by the Ohio Board of Regents under R.C. Chapter 1713. or a certificate of registration issued by the State Board of Proprietary School Registration under R.C. Chapter 3332. "Institution of higher education" also includes any accredited college, university, or other postsecondary institution located outside Ohio. To be considered an "institution of higher education," an institution must meet the definition of an eligible educational institution under Section 529 of the Internal Revenue Code. (R.C. 3334.01(F).)

³ R.C. 3334.02(D). *As provided for under federal law, the new program would permit any individual, whether or not the individual is an Ohio resident, citizen, or taxpayer, to participate as a contributor or a beneficiary.*



made before the act's effective date were not deductible, they are not to be taxed upon refund.)

Continuing law allows a deduction for income related to tuition credits that have not been refunded, to the extent included in federal adjusted gross income. This deduction is retained and expanded in the act to include earnings on contributions to variable college savings program accounts. Continuing law also allows a deduction for credits that have been refunded if the purchase price exceeds the amount of the refund, to the extent that the excess was not deducted from federal adjusted gross income. This deduction is retained in the act, but only if no deduction was taken for the purchase or contribution. (This means, essentially, that this deduction remains available for credits purchased before the act's effective date; credits purchased after the act's effective date are deductible.)

Continuing law requires that losses related to tuition credits be added to adjusted gross income to the extent they were deducted in determining federal adjusted gross income. The act retains this requirement and expands it to include losses related to contributions made under the Variable College Savings Program. Prior law required that the amount of refunded credits be added to adjusted gross income to the extent not included in federal adjusted gross income. The act eliminates this requirement.

The act provides that its tax provisions apply to tax years beginning on and after January 1, 2000.

Administration of the program

(R.C. 3334.01, 3334.02, 3334.08, 3334.10, 3334.11, 3334.12, 3334.15, 3334.18, 3334.19, 3334.20, and 3334.21)

The Tuition Trust Authority is authorized to contract with a contributor to open and maintain investment accounts for one or more beneficiaries. The Authority must maintain a separate account for each variable college savings contract entered into for contributions made on behalf of a beneficiary, showing the name of the beneficiary of that contract and the amount of contributions made pursuant to that contract. As required under federal law, there must be one contract and one investment account under that contract for each beneficiary for whom the contributor plans to make contributions. The contract must permit a contributor to substitute a new beneficiary for the one for whom the contract was originally made, to the extent permitted by federal law.⁴ Participation in the program does not guarantee that the contributions, or any return on investment of

⁴ R.C. 3334.08(A)(22), 3334.10(H), 3334.18(A), and 3334.19(B).

the contributions, will be adequate to cover future college tuition and expenses of the beneficiary. Nor does participation guarantee that the beneficiary will be admitted to attend an institution of higher education. The act states that (1) Ohio incurs no debt or obligation as a result of the establishment of the new program, (2) returns on contributors' investments in the program are not guaranteed by Ohio and that contributors to the program assume all investment risk, (3) Ohio assumes no risk or liability for funds invested in the program, and (4) informational materials about the program prepared by the Authority or its agents and provided to prospective contributors must state clearly information regarding investment risks and liabilities.⁵ Nevertheless, the investment agents of the Authority must exercise their duties "with the care and diligence that a prudent person familiar with such matters and with the character and aims of the program would use." In addition, the assets of the program must be preserved, invested, and expended solely for the purposes of the program and may not be used or loaned by Ohio for any other purpose. However, the act specifies that it is not to be construed to prohibit the Authority or its investment agents from investing, by purchase or otherwise, in bonds, notes, or other obligations of Ohio or any Ohio agency or instrumentality. In addition, the act provides that, unless otherwise specified by the Authority, assets of the program are to be expended in the following order of priority: (1) to make payments on behalf of beneficiaries, (2) to make refunds upon termination of Variable College Savings Program contracts, and (3) to pay the costs of program administration and operations.⁶

For purposes of the Variable College Savings Program, the Authority must adopt an investment plan guiding the administration of the program. Except as provided in the act's provisions authorizing interim investment of program funds, the Authority must contract with insurance companies, banks, or other financial institutions to serve as its investment agents and to provide such services as the Authority considers appropriate to the investment plan. The act specifies that these services may include: (1) purchase, control, and safekeeping of assets, (2) record keeping and accounting for individual accounts and for the program as a whole, and (3) provision of consolidated statements of account. Assets of the program may be invested in savings accounts, fixed or variable life insurance or annuity contracts, securities, evidences of indebtedness (including bonds, notes, or other obligations of Ohio or its instrumentalities), and other investment products in

⁵ *R.C. 3334.18(C)*.

⁶ *R.C. 3334.19(E) and (F)*.

conformance with the investment plan. Contributors may not direct the investment of their contributions under the program.⁷

The act provides that if a condition arises concerning the investment of funds received under the Variable College Savings Program and requiring an interim period for investment of program funds, the Authority must choose the Treasurer of State, a state agency having investment authority, or an investment agent under contract with the Authority, to invest program funds pursuant to the investment plan established by the Authority. The Treasurer of State, state agency, or investment agent chosen by the Authority is subject to the requirements and conditions that apply to investment agents specified in the act. In addition, for purposes of this provision, "state agency" means every department, bureau, board, commission, office, or other organized body established by the Constitution or the laws of Ohio for the exercise of state government. The Authority is the trustee of the program. In addition, the act specifies that during the interim period the Authority is to receive and hold all (1) payments, deposits, and contributions, (2) gifts, bequests, endowments, (3) federal, state, or local grants and any funds from any other source, public or private, and (4) all earnings, until disbursed to pay tuition or other higher education expenses or refunds pursuant to college savings plans contracts. In addition, the Authority must keep such funds segregated from all other assets of the Authority.⁸ The Authority must adopt rules defining (1) the conditions under which an interim investment period is required and the interim investment provisions apply, (2) any condition requiring the termination of the interim period, (3) any condition requiring the Authority to contract with an alternative investment agent pursuant to the act, and (4) any other requirements that apply during the interim investment period. The act provides that when the interim period for investment of program funds terminates, the investment agent selected pursuant to the act for the investment of program funds other than during an interim investment period has the sole authority to invest program funds pursuant to the Authority's investment plan established under the act, and is subject to the act's requirements governing the investing of program funds.⁹

As required under federal law, the Authority must "provide adequate safeguards to prevent" the combined contributions to a Variable College Savings Program account and purchases of tuition credits under the continuing college savings program, from exceeding the amount necessary to pay tuition and other higher education expenses of the beneficiary, consistent with the maximum

⁷ R.C. 3334.19(A), (C), and (D).

⁸ R.C. 3334.20.

⁹ R.C. 3334.20.

contributions permitted by federal law.¹⁰ In addition, contributors and beneficiaries are entitled to request an annual statement of the contributions in each account.¹¹ Any records of the program that indicate the identity of contributors or beneficiaries or amounts contributed to, earned by, or distributed from specific accounts are not public records for purposes of the Public Records Law.¹²

Rule-making authority

Under the act, the Authority must adopt "111" rules (under R.C. 111.15) for the implementation and administration of the Variable College Savings Program. The rules must provide taxpayers with the maximum tax advantages and flexibility consistent with federal law and regulations adopted thereunder with regard to disposition of contributions and earnings, designation of beneficiaries, and rollover of account assets to other programs.¹³

Termination of contracts and refunds

The Authority may terminate any Variable College Savings Program contract if the contributor has not made any contributions to the account established under that contract for three years or more or if the amount of contributions are less than "an amount set by rule [of the Authority]."¹⁴

The contributor may terminate any of the contributor's contracts with the Authority for any reason upon the contributor's written request to the Authority. No contract may be terminated, however, until the expiration of "a maturity period set by the Authority."¹⁵

If a contract is terminated because of the death or permanent disability of the beneficiary or "upon the rollover of the account to an equivalent account of another state," the act provides that the contributor may receive a refund of the account balance less administrative fees. If the contract is terminated for any other

¹⁰ R.C. 3334.18(B).

¹¹ R.C. 3334.10(H).

¹² R.C. 3334.19(G). *The Public Records Law is codified in R.C. 149.43 (not in the act).*

¹³ R.C. 3334.08(B).

¹⁴ R.C. 3334.08(A)(21).

¹⁵ R.C. 3334.10(C).

reason, the contributor may receive a refund of the account balance less administrative fees *and less any additional amount necessary to meet the "minimum refund penalty"* as required under federal law. The Authority is required to determine the method and schedule for payment of refunds; earnings are to be calculated as the total value of the account less the aggregate contributions, or in such other manner as prescribed by section 529 of the Internal Revenue Code.¹⁶

Termination of the program

The act provides that the Variable College Savings Program may be terminated by statute, or by the Authority if it determines that the program is not financially feasible. Upon termination of the program, all amounts held in program accounts must be returned to account owners to the extent possible. Any unclaimed assets must be deposited in the state's Unclaimed Funds Trust Account and distributed according to existing unclaimed funds law.¹⁷

Miscellaneous

The right to a tuition credit or a scholarship program, under continuing law, or the right to funds of a Variable College Savings Program account, under the act, may not be used as security or collateral for a loan.¹⁸

Continuing law provides that the right to a tuition credit or a scholarship program is not subject to execution, attachment, garnishment, or operation of bankruptcy or insolvency laws. The act adds that the right to funds of a Variable College Savings Program account also are not subject to such actions.¹⁹

Change in refund policy under the continuing tuition credit program

(R.C. 3334.10(B)(2)(a))

Under continuing law, when a college savings program account is terminated because of death or permanent disability of the beneficiary of that account, the refund is to be the greater of:

¹⁶ R.C. 3334.10(D).

¹⁷ R.C. 3334.21.

¹⁸ R.C. 3334.15(B).

¹⁹ R.C. 3334.15(A).

- (1) One per cent of the weighted average tuition in the year the contact is terminated multiplied by the number of tuition credits purchased but not used; or
- (2) The total purchase price of the tuition credits purchased but not used.

The act adds that the weighted average tuition used to calculate the refund in paragraph (1) above is to be based on the year the "refund is paid." Thus, the owner of the account in such case would benefit from any increases in the tuition credit price from the time of termination of the contract to the time the refund is actually paid to the owner.

OHIO PURCHASE OF EDUCATION LOANS ON SECONDARY MARKET

Expanding Ohio's authority to purchase federal education loans

(R.C. 3366.01, 3366.03, and 3366.04)

Continuing law; former law

Under continuing authority to purchase education loans on a secondary market (Chapter 3366.), the Treasurer of State issues revenue bonds to finance the purchase of education loans made to Ohio residents or students attending Ohio institutions. Formerly, the loans were originated *only* by specified financial institutions (banks, national banking associations, savings banks, savings and loan associations, and credit unions) having an office in Ohio and meeting state policy guidelines. Previously, the Director of Development or the Treasurer of State was authorized to enter into agreements *only* with a nonprofit corporation designated under continuing law on student assistance (R.C. 3351.07) to "operate exclusively for charitable and educational purposes by expanding access to higher education financing programs for students and families in need of student financial aid." Under continuing authority, as modified by the act, the Treasurer of State issues obligations to make loans to the "designated administrator" (formerly the "designated nonprofit corporation") generally for the purpose of acquiring education loans on the secondary market in accordance with policy guidelines established by rule of the Director of Development with the approval of the Treasurer of State.

The act

The act expands Ohio's authority to purchase *federal* education loans on the secondary market. Under the act, a federal education loan is an education loan that is originated in compliance with the Family Education Loan Program established under the federal "Higher Education Act of 1965," and that is made by

any person (1) that is permitted to make loans under that program, (2) that has an office in Ohio, and (3) that meets the criteria for an eligible lender established under the policy guidelines. In addition, with respect to all obligations issued on and after September 1, 1999 and to all federal education loans, the act expressly authorizes the Ohio subsidiary of the nonprofit corporation specified in ongoing law to be the designated administrator. The act also specifically permits "any other person" to serve as the administrator. The subsidiary or other person, however, must (1) enter into an administration agreement with the Treasurer of State and the Director of Development, and (2) maintain its principal place of business in Ohio and have as its principal business the making, purchasing, holding, or selling of loans made to finance individuals' cost of post-secondary education.

Continuing law specifies several items that are pledged by bond proceedings for the payment of bond service charges and that constitute "pledged receipts." The act removes a reference to "any guarantees or insurance" in regard to the "interest of the state in any education loans."

SCHOLARSHIP AND FELLOWSHIP PROGRAMS

Outstanding Scholarship and Ohio Priority Needs Fellowship Programs

(R.C. 3333.37 and 3333.371 to 3333.375)

Overview

The act establishes the Ohio Outstanding Scholarship and Ohio Priority Needs Fellowship Programs, administered by the Board of Regents and the proposed Rules Advisory Committee, to provide scholarships to Ohio residents who are eligible undergraduate students seeking baccalaureate degrees and fellowships to Ohio residents who are eligible graduate students seeking post-baccalaureate degrees in priority needs fields. Funds for these programs would be provided by the state and used toward the annual costs of obtaining these degrees.

Purpose and establishment

The act states as its purposes the creation of (1) a scholarship program for undergraduate students pursuing a baccalaureate degree in any field of study to encourage the retention of Ohio outstanding students, and (2) a fellowship program for graduate students at Ohio institutions of higher education to encourage such students to pursue fields of study that are determined to be a priority for the state in advancing its economic, technological, and academic interests.

The act specifies that the Ohio Outstanding Scholarship and the Ohio Priority Needs Fellowship Programs are to be established and administered by the Ohio Board of Regents for eligible students. The programs are to provide scholarships to eligible undergraduate students and fellowships to eligible graduate students, equal to the annual cost of attendance at eligible institutions, to pursue baccalaureate degrees and post-baccalaureate degrees in priority needs fields of study consistent with the act.

Under the act, "cost of attendance" means all costs of a student incurred in connection with a program of study at an eligible institution, as determined by the institution, including tuition; instructional fees; room and board; books, computers, and supplies; and other related fees, charges, and expenses. The term "priority needs field of study" is defined as those academic majors and disciplines as determined by the Ohio Board of Regents that support the purposes and intent of this part of the act.

Eligible recipients

Under the act, eligible recipients of the *scholarships* are undergraduate students who are residents of Ohio and (1) have graduated from any Ohio secondary school for which the State Board of Education prescribes minimum standards in accordance with Department of Education Law, and (2) are attending and in good standing, or have been accepted for attendance, at any eligible institution as a full-time student to pursue a bachelor's degree. Eligible recipients of the *fellowships* are graduate students who are Ohio residents and are attending and in good standing, or have been accepted for attendance, at any eligible institution. The act provides that "full-time student" has the meaning defined by rule of the Ohio Board of Regents. In addition, an eligible institution is (1) a state-assisted post-secondary educational institution in Ohio, or (2) a nonprofit institution of higher education in Ohio meeting specified requirements. Under the act, these requirements include (1) obtaining authorization from the Ohio Board of Regents pursuant to the Educational Corporation Law, (2) being accredited by the appropriate regional and, when appropriate, professional accrediting associations within whose jurisdiction the institution falls, (3) being authorized to grant a bachelor's degree or higher, and (4) satisfying other conditions as set forth in the policy guidelines adopted by the Ohio Board of Regents under the act. The policy guidelines are included in the rules adopted by the Ohio Board of Regents pursuant to the act.

Renewability

The act specifies that the scholarships are renewable for each of three additional years for undergraduate study. The fellowships are renewable for each

of two additional years for graduate study. Renewability under each of these programs depends upon the scholar or fellow recipient remaining an eligible student at an eligible institution.

Rules Advisory Committee; establishment of guidelines for the programs

The act provides that the Board of Regents is to establish the Rules Advisory Committee. The Committee is to consist of (1) the Chancellor of the Ohio Board of Regents or the Chancellor's designee, (2) the Treasurer of State or the Treasurer of State's designee, (3) the Director of Development or the Director's designee, (4) one state senator appointed by the President of the Senate, (5) one state representative appointed by the Speaker of the House of Representatives, and (6) two public members appointed by the Chancellor representing the interests of the state-assisted eligible institutions and private nonprofit eligible institutions, respectively.

The act requires the Rules Advisory Committee, within 120 days after the act's effective date, to provide recommendations to the Ohio Board of Regents as to such rules, criteria, and guidelines as are necessary and appropriate to implement the scholarship and fellowship programs created by the act. In addition, the act requires the Committee to meet at least annually to (1) review the scholarship and fellowship programs guidelines, (2) make recommendations to amend, rescind, or modify the policy guidelines, and (3) approve scholarship and fellowship awards to eligible students.

The act specifies that the Rules Advisory Committee is *not* subject to law requiring the expiration of an agency after four years unless the agency's existence is renewed by the General Assembly.

After receipt of recommendations from the Rules Advisory Committee or if no recommendations are received, the Ohio Board of Regents, not later than 180 days after the act's effective date and with the approval of the Treasurer of State, must adopt rules, in accordance with the Administrative Procedure Act, establishing policy guidelines for the programs that the Board considers necessary and appropriate to provide for the implementation of the scholarship and fellowship programs. In addition, the act provides that its provisions do not prevent the Ohio Board of Regents, with the approval of the Treasurer of State, amending or rescinding these rules or adopting new rules, in accordance with the Administrative Procedure Act, from time to time as necessary to further the act's purposes.

Funding; investment of funds

The act provides that the scholarship and fellowship programs created by the act and any necessary administrative expenses are to be funded solely from the Ohio Outstanding Scholarship and the Ohio Priority Needs Fellowship Programs Payment Funds established by the act. The act specifies that these funds are in the custody of the Treasurer of State, but are not a part of the state treasury. In addition, the funds are to be used solely (1) for scholarships and fellowships awarded under the act by the Ohio Board of Regents, and (2) for any necessary administrative expenses incurred by the Board in administering the scholarship and fellowship programs.

The act specifies that the funds are to consist solely of all moneys returned to the Treasurer of State, as issuer of certain tax-exempt student loan revenue bonds, from all indentures of trust, both existing and future, created as a result of tax-exempt student loan revenue bonds issued under law relating to the purchase of student loans by Ohio (Chapter 3366.), and any moneys earned from allowable investments of the payment funds made by the Treasurer of State under the act.

The Treasurer of State is authorized to invest any moneys in the payment funds not currently needed for scholarship and fellowship payments in any kind of investments in which moneys of the Public Employees Retirement System may be invested under the Public Employees Retirement System Law. The act provides that instruments of title of all investments are to be delivered to the Treasurer of State or to a qualified trustee designated by the Treasurer of State as provided under the Uniform Depository Act.

In addition, the act specifies that the Treasurer of State is to collect both principal and investment earnings on all investments as they become due and pay them into the payment funds. All deposits to the payment funds are to be made in public depositories of Ohio and secured as provided in the Uniform Depository Act.

Finally, on or before March 1, 2001, and on or before the first day of March in each subsequent year, the Treasurer of State must provide to the Chancellor of the Ohio Board of Regents a statement indicating the moneys in the Ohio Outstanding Scholarship and the Ohio Priority Needs Fellowship Programs Payment Funds that are available for the upcoming academic year to award scholarships and fellowships under the act.

HISTORY

ACTION

DATE

JOURNAL ENTRY



Introduced	06-29-99	p.	827
Reported, S. Education	10-20-99	p.	1095
Passed Senate (33-0)	10-20-99	p.	1100
Reported, H. Financial Institutions	01-19-00	pp.	1529-1530
Passed House (96-0)	01-25-00	pp.	1540-1541
Senate concurred in House amendments (29-0)	01-26-00	p.	1352

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