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Bill Analysis
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(As Reported by H. Financial Institutions)

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

BILL 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.
- Expands the authority of Ohio to purchase 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.

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CONTENT AND OPERATION

VARIABLE COLLEGE SAVINGS PROGRAM

Background

Under current 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 bill). 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 bill).

Variable College Savings Program

Overview

The bill requires the Ohio Tuition Trust Authority to establish a Variable College Savings Program, which would supplement the existing 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 The account would be invested by the state or an agent of the state to provide a variable rate of return for the beneficiary. A contributor under the Variable College Savings

¹ R.C. 3334.02(C). *The bill 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)).*

Existing law, unchanged by the bill, 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).)

Program may simultaneously participate as a purchaser in the existing college savings program.³

Tax treatment

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

The bill 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 bill becomes law. (Since purchases made before the law were not deductible, they are not to be taxed upon refund.)

Existing 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 bill to include earnings on contributions to variable college savings program accounts. Existing 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 bill, 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 effective date of the new law; credits purchased after the effective date are deductible.)

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

Existing 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 bill retains this requirement and expands it to include losses related to contributions made under the variable college savings program. Existing law requires that the amount of refunded credits be added to adjusted gross income to the extent not included in federal adjusted gross income. The bill eliminates this requirement.

The bill 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 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 bill 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

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

⁵ R.C. 3334.18(C).

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

The bill 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 bill. 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 bill specifies that during the interim period the Authority is to receive and hold all (1) payments, deposits, and contributions,

⁶ R.C. 3334.19(E) and (F).

⁷ R.C. 3334.19(A), (C), and (D).

(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 bill, and (4) any other requirements that apply during the interim investment period. The bill provides that when the interim period for investment of program funds terminates, the investment agent selected pursuant to the bill 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 bill and is subject to the bill'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 the Variable College Savings Program account and purchases of tuition credits under the existing college savings program, from exceeding the amount necessary to pay tuition and other higher education expenses of the beneficiary, consistent with the maximum 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 bill, 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

⁸ R.C. 3334.20.

⁹ R.C. 3334.20.

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 bill).*

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 bill provides that the contributor may receive a refund of the account balance less administrative fees. If the contract is terminated for any other 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 bill 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

¹³ R.C. 3334.08(B).

¹⁴ R.C. 3334.08(A)(21).

¹⁵ R.C. 3334.10(C).

¹⁶ R.C. 3334.10(D).

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 existing law, or the right to funds of a Variable College Savings Program account may not be used as security or collateral for a loan.¹⁸

Current law, not changed by the bill, 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 bill 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 existing tuition credit program

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

Under existing 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:

- (1) One per cent of the weighted average tuition in the year the contract 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 bill specifies 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

Expanding Ohio's authority to purchase education loans

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

¹⁷ R.C. 3334.21.

¹⁸ R.C. 3334.15(B).

¹⁹ R.C. 3334.15(A).

Current law

Under current 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 attendees of Ohio institutions. The loans are originated by financial institutions in Ohio meeting policy guidelines. Under existing law, the Director of Development or the Treasurer of State is authorized to enter into agreements with a nonprofit corporation designated under current 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." The Treasurer of State issues obligations to make loans to this designated corporation generally for the purpose of acquiring education loans in accordance with rules adopted by the Director of Development and the Treasurer of State.

The bill

The bill expands the scope of law permitting the purchase by Ohio of education loans on the secondary market primarily by permitting the Ohio-sponsored secondary market to purchase education loans in connection with administration agreements between the Director of Development and persons ("designated administrators") in Ohio having the principal business of making, purchasing, holding, or selling *federal* education loans made under state guidelines to finance the cost of post-secondary education loans. Under the bill, 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 that is permitted to make loans under that program, that has an office in Ohio, and that meets the criteria for an eligible lender established under the policy guidelines. In addition, the bill modifies provisions authorizing the nonprofit corporation involved in the current program to be a designated authority for federal loans and expressly authorizes the Ohio subsidiary of the nonprofit corporation specified in current law on student assistance (R.C. 3351.07) to be a designated administrator.

Current law specifies several items that are pledged by bond proceedings for the payment of bond service charges and that constitute "pledged receipts." The bill 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 bill 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 field." Funds for these programs would be provided by the state and used toward the annual costs of obtaining these degrees.

Purpose and establishment

The bill 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 bill 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 field of study consistent with the bill.

Under the bill, "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. "Priority needs field of study" means those academic majors and disciplines as determined by the Ohio Board of Regents that support the purposes and intent of this part of the bill.

Eligible recipients

Under the bill, 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 bill 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 bill, 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 bill. The policy guidelines are included in the rules adopted by the Ohio Board of Regents pursuant to the bill.

Renewability

The bill 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 bill specifies 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 bill requires the Rules Advisory Committee, within 120 days after the bill'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 bill. In addition, the bill 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 bill 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 bill'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 bill 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 bill's purposes.

Funding; investment of funds

The bill provides that the scholarship and fellowship programs created by the bill 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 bill. The bill specifies that these funds are in the custody of the Treasurer of State, but are not a part of the state treasury. In addition, under the bill, the funds are to be used solely for scholarships and fellowships awarded under the bill by the Ohio Board of Regents and for any necessary administrative expenses incurred by the Board in administering the scholarship and fellowship programs.

The bill 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 presently 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 bill.

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 bill 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 bill 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, under the bill, 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 bill.

HISTORY

ACTION	DATE	JOURNAL ENTRY
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