



**H.B. 204**

124th General Assembly  
(As Introduced)

Reps. Williams, Grendell, Goodman, Faber, Gilb, Flowers, Schaffer,  
Brinkman

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**BILL SUMMARY**

- Requires the Superintendent of Public Instruction to establish a child-centered scholarship program in every school district declared to be in a state of academic emergency and specifies some standards and procedures for such a program.

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**CONTENT AND OPERATION**

**Establishment and operation of a child-centered scholarship program in academic emergency school districts**

The bill requires the Superintendent of Public Instruction to establish a "child-centered" scholarship program in every school district declared to be in a state of academic emergency.<sup>1</sup> Under that program, the Department of Education must pay a scholarship to cover all or part of the cost of private school tuition to the parent of a student who is entitled to attend school in such a district but instead enrolls in a private school registered with the Superintendent to participate in the

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<sup>1</sup> *The Department of Education must declare a district to be in a state of "academic emergency" if it does not meet more than 33% of the state academic performance standards (R.C. 3302.03(B), not in the bill).*

*The bill states that a child-centered scholarship program may not be established in any school district in which there is already a Pilot Project Scholarship Program operating. That program (often called the "voucher program") provides scholarships for private school tuition and tutorial assistance grants to students in any school district that is or has ever been under a federal court order requiring supervision and operational management by the state. (R.C. 3313.975(A).) Currently, only the Cleveland Municipal School District qualifies for such a program. (See COMMENT.)*

program.<sup>2</sup> To qualify for a scholarship, a parent by March 15 of any year must inform the Department of the name and address of the parent, the school where the student will be enrolled in the following school year, and the tuition that will be charged by the school. The State Board of Education may require additional information in the parent's report.<sup>3</sup>

The amount of the scholarship paid for each student is the lesser of either:

(1) The amount of the tuition; or

(2) The sum of the state payments that the school district in which the student is entitled to attend school would receive for that student if the student had enrolled in the district's schools. Those payments include any state payments for base cost funding, special education funding (if the student receives special education services), and Disadvantaged Pupil Impact Aid (if the student lives in a family receiving family assistance).<sup>4</sup>

The scholarships are to be paid by the Department "from time to time during the school year"; however the first payment must be made by November 30 and must equal at least one-third of the total amount of the annual scholarship. If a student withdraws from the private school before the end of the school year, the Department must proportionally reduce the payment to the parent. The State Board is further required to adopt rules pertaining to the reporting of students who withdraw from a private school while receiving a scholarship.<sup>5</sup>

If a school district in which a scholarship program is operating is notified that it no longer is in a state of academic emergency, the bill provides that no new students may receive scholarships beginning in the first school year after the notice is received. Nevertheless, those students that received scholarships in the previous year may continue receiving scholarships as long as the student is still entitled to attend school in the district. In addition, if the school later receives

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<sup>2</sup> Under the bill, "parent" means a natural or adoptive parent of the student, the "residential parent" of the student (in the case of marriages that have been legally terminated or where the parents are legally separated), or the legal custodian of the student (if a court has granted custody to some other person) (R.C. 3313.98(A)(1), referred to but not in the bill).

<sup>3</sup> R.C. 3302.21, 3302.23, and 3302.25.

<sup>4</sup> R.C. 3302.27(B). The Department of Education is required to deduct the aggregate of the amounts paid to parents under the program from the amount of state payments the district receives annually under the state school funding law (R.C. 3302.29).

<sup>5</sup> R.C. 3302.27(C) to (D).

notice that it is once again in a state of academic emergency, then the program must resume payment of new scholarships beginning in the next school year.<sup>6</sup>

**Registration of private schools eligible to enroll scholarship students**

In order to receive tuition payments from parents who have been awarded a scholarship under this program, a private school must register with the Superintendent of Public Instruction. The Superintendent must register those schools that satisfy the following conditions:

- (1) The school agrees in writing to follow all requirements of the child-centered scholarship program;
- (2) The school meets the state minimum standards for chartered nonpublic schools in effect on July 1, 1992;
- (3) The school agrees to administer all the required state proficiency tests that apply to the grade levels served by the school;<sup>7</sup>
- (4) The school does not discriminate on the basis of race, religion, or ethnic background;
- (5) The school enrolls at least 10 students in each class or a sum of at least 25 students in all classes offered;
- (6) The school "does not advance or foster unlawful behavior or teach hatred of any person or group on the basis of race, ethnicity, national origin, or religion"; and
- (7) The school "does not provide false or misleading information about the school to parents, students, or the general public."<sup>8</sup>

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<sup>6</sup> R.C. 3302.31.

<sup>7</sup> *Currently, state law requires school districts and community schools to administer 4th, 6th, 9th, and 12 grade proficiency tests in the five areas of reading, writing, mathematics, science, and citizenship. The 9th grade tests are being phased out in favor of 10th grade tests. Chartered nonpublic schools may give the 4th and 6th grade tests, but they are required to administer the 9th (soon to be 10th) grade tests. Attainment of a passing score on all of the high school proficiency tests is required for graduation from public or nonpublic high schools. Attainment of a passing score on the 4th grade reading proficiency test is required for promotion to the 5th grade unless either the student is a disabled student and is excused from taking that test under the student's individualized education program or the student's reading teacher and principal both agree that the student is academically prepared for the 5th grade. (R.C. 3301.0710, 3301.0711, 3313.608, 3313.61, 3313.611, 3313.612, and 3325.08; Section 4 of Am. Sub. S.B. 55 of the 122nd General Assembly (the only of these sections in the bill is R.C. 3313.612).)*

The bill grants the Superintendent discretion to register nonchartered nonpublic schools that meet all of the other requirements prescribed for registration.

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## COMMENT

The current scholarship program that operates in the Cleveland Municipal School District has been challenged on grounds that it violates the provisions of the Ohio and U.S. Constitutions prohibiting "the establishment of religion" by the state, due the fact that religious schools enroll students whose parents receive scholarships under that program. In 1999, the Ohio Supreme Court held that the program did not violate those provisions but instead held that its enactment in the general operating budget act in 1995 violated the single-subject rule of the Ohio Constitution.<sup>9</sup> Subsequently, the General Assembly reenacted that program in a separate education budget act for the 1999-2001 biennium.<sup>10</sup> Since then, the plaintiffs brought suit in federal court on Establishment Clause grounds. Both the U.S. district court for the Northern District of Ohio and the U.S. Court of Appeals for the 6th Circuit have held that the program violates the U.S. Constitution on such grounds. In its most recent decision on February 28, 2001, the Appeals Court denied a rehearing of the matter before the full (*en banc*) panel of the Court. That decision has been appealed to the U.S. Supreme Court.<sup>11</sup> The federal courts have so far allowed the program to continue to operate in limited form pending the litigation of this matter. The program established under this bill is similar to the one operating in Cleveland.

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	04-05-01	p. 297

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<sup>8</sup> R.C. 3302.33(A).

<sup>9</sup> *Simmons-Harris v. Goff* (1999), 86 Ohio St.3d 1.

<sup>10</sup> R.C. 3313.974 to 3313.979 as enacted in Am. Sub. H.B. 282 of the 123rd General Assembly.

<sup>11</sup> *Simmons-Harris v. Zelman* (00-3055). See also "Attorney General Appeals School Choice Case to U.S. Supreme Court," News Release, May 23, 2001.