



S.B. 172

124th General Assembly
(As Reported by H. Ways and Means)

Sens. Oelslager, Robert Gardner, Mead, Harris, Spada, Armbruster, Carnes, White, Mumper

BILL SUMMARY

- Establishes the CollegeAdvantage Savings Plan as the common name for the Guaranteed College Savings Program and the Variable College Savings Program operated by the Ohio Tuition Trust Authority.
- Allows the value of a tuition unit under the Guaranteed Program to vary from 1% of the weighted average tuition at four-year state universities.
- Specifies that no advance notice is required for an adjustment in the price of tuition units.
- Prohibits the Authority from directly investing funds held in Variable Program accounts.
- Provides that rules governing the Variable Program not be any more restrictive than is necessary for the program to qualify for the favorable federal tax treatment for such plans.
- Specifically requires the Ohio Tuition Trust Authority to terminate the Guaranteed College Savings Program if the Fund becomes actuarially unsound and adjustments in the price of tuition units will not restore soundness.
- Requires disclosure of all fees and other charges imposed on account owners.
- Expressly requires the Authority, when investing Guaranteed Program funds, to consider the integrity of the state's finances and the benefits to account owners and beneficiaries.

- Requires the Authority to wait at least six years before closing a Guaranteed Program account that has not been used during that period, and requires the account balance to be disposed of as unclaimed funds rather than being retained by the Authority.
- Creates the Variable Operating Fund for the operation and administration of the Variable Program.
- Requires the Authority to impose a service charge on the Variable Program to reimburse the Guaranteed Program for the start-up costs of the Variable Program.
- Grants explicit authorization to the Authority to contract for the sale of tuition units.
- Clarifies that the costs to be paid from the Ohio Tuition Trust Fund include compensation paid to employees, vendors, and any other individual or entity responsible for investments.
- Permits the rollover of an account under the Guaranteed Program into the Variable Program.
- Changes the method of calculating refunds under the Guaranteed Program when an account is terminated.
- Eliminates the restriction under the Guaranteed Program of one request for an account statement per year.
- Eliminates the current procedure for refunding accounts in the college savings programs when a beneficiary withdraws from school.
- Makes other administrative changes to the college savings programs.

CONTENT AND OPERATION

Background

Under section 529 of the Internal Revenue Code, states may establish and maintain a state tuition program under which a person (1) may purchase credit toward tuition on behalf of a designated beneficiary that entitles the beneficiary to the waiver or payment of qualified higher education expenses or (2) may make contributions to an account set up for the purpose of meeting the qualified higher

education expenses of the designated beneficiary of the account. These programs receive favorable federal and state tax treatment for their assets and distributions to beneficiaries. In Ohio, under continuing law, the Ohio Tuition Trust Authority operates two college savings programs that correspond to the types permitted by federal law: (1) a guaranteed savings program and (2) a variable savings program. Each program allows beneficiaries to acquire savings toward the future payment of college tuition. A person may participate in one or both of the savings programs.

Guaranteed College Savings Program

Contributors to the Guaranteed College Savings Program purchase tuition units on behalf of a designated beneficiary at approximately 1% of the weighted average tuition charged at public four-year universities in Ohio for the year the units are purchased, although the actual cost may be higher if the Authority determines that a price adjustment is necessary to maintain the actuarial soundness of the program.¹ Each unit may be redeemed upon the beneficiary's enrollment at a college, university, or other institution of higher education anywhere in the United States for 1% of the weighted average tuition charged at public four-year universities in Ohio for the year in which the units are spent for college expenses. Tuition units under the guaranteed savings program are backed by the full faith and credit of the State of Ohio. The program is based upon the assumption that 100 tuition units equal one year of college tuition so that contributors may be reasonably certain of the percentage of future college tuition costs that will be covered by the units they acquire.

Variable College Savings Program

Under the Variable College Savings Program, rather than purchasing tuition units, an individual contributes money to an investment account managed by the state, or its agent, for the benefit of the beneficiary. Assets of the variable savings program are invested in savings accounts, life insurance or annuity contracts, securities, bonds, or other investment products in accordance with a plan adopted by the Authority. Because the program is market-based, it generally provides a variable rate of return and contributors assume all investment risk.

¹ "Weighted average tuition" is the tuition cost resulting from the following calculation: (1) the addition of the products of the annual undergraduate tuition charged to Ohio residents at each four-year state university multiplied by that institution's total number of undergraduate fiscal year equated students and (2) the division of the resulting gross total from (1) by the total number of undergraduate fiscal year equated students attending four-year state universities (sec. 3334.01(I)).

Change of name to the CollegeAdvantage Savings Plan

(sec. 3334.02(E))

Under the bill, the Guaranteed College Savings Program and the Variable College Savings Program are collectively referred to as the CollegeAdvantage Savings Plan. Although the bill unites the two programs under a common name, they retain their status as independent programs to provide college savings options for contributors. The bill specifically states that the CollegeAdvantage Savings Plan is intended to be a qualified state tuition program under section 529 of the Internal Revenue Code for purposes of determining eligibility and need for student loans, grants, or other aid programs.

Value of tuition unit

(sec. 3334.09(B))

Current law stipulates that each tuition unit purchased through the Guaranteed College Savings Program entitles the beneficiary to an amount equal to 1% of the weighted average tuition at four-year state universities when the tuition unit is redeemed. Under the bill, the beneficiary is entitled to such an amount "unless otherwise specified." The bill does not indicate who is responsible for specifying an alternative amount. There is also no provision for where or when such information must be made available.

Application of service charge to the Variable Program and establishment of the Variable Operating Fund

(secs. 3334.08(A)(23) and 3334.19(F) and (G))

As mandated by Am. Sub. S.B. 161 of the 123rd General Assembly, the Authority established the Variable College Savings Program in October 2000. The initial costs of starting and running the new program were borne by the Guaranteed College Savings Program. Consequently, the bill requires the Authority to apply a "reasonable" service charge in a "nondiscriminatory" manner to the Variable College Savings Program for the express purpose of reimbursing the Guaranteed College Savings Program for the expenses it incurred during the early phase of the variable program. (Sec. 3334.08(A)(23).)

In addition, the bill creates the Variable Operating Fund from which all future costs of operating and administering the Variable College Savings Program must be paid. Any fees, charges, and other costs imposed or collected by the Authority in operating the variable program must be deposited into the Fund. The amount of fees, charges, or other costs charged to account owners or beneficiaries

may not exceed the amount necessary to defray the Authority's administrative expenses after fees paid by the Authority's investment agents are deducted.

Under continuing law, the Authority must spend assets of the variable program in the following order of priority: (1) to make payments on behalf of participants, (2) to make refunds upon the termination of individual savings accounts, and (3) to pay the costs of administering the Variable Program. The bill further requires the Authority to use moneys from the Variable Operating Fund for any other expenditures the Authority considers "appropriate for the benefit of the Variable College Savings Program." (Sec. 3334.19(F) and (G).)

The bill also requires the Authority to disclose certain information to account owners, beneficiaries, and prospective account holders. The Authority must disclose the total amount of fees or other payments made each year to the Authority by the Authority's investment agents. The Authority also must express all fees and other charges paid by account owners, investment agents, or others as a percentage of the average daily amount held in Variable Program accounts.

Investment considerations for Guaranteed Program account funds

(sec. 3334.11(L))

Currently, the Authority, when investing Guaranteed Program account funds, must give consideration to investments that "enhance the general welfare of the state and its citizens where the investments offer quality, return, and safety comparable to other investments currently available." Also, equal consideration must be given to investments involving firms owned or controlled by minorities or women. The bill adds two other express factors the Authority must consider: investments benefiting account owners and beneficiaries, and investments that preserve the integrity of the state's finances.

Investment of Variable Program contributions

(sec. 3334.19(C))

Currently, the Authority is authorized to invest funds held in Variable Program accounts or to engage an investment agent to invest those funds (or both). The bill eliminates the Authority's power to invest Variable Program account funds, permitting only the Authority's investment agents to invest those funds.

Administrative rules for Variable Program

(sec. 3334.08(B))

The Authority is required by current law to adopt rules governing the Variable Program. The rules must provide taxpayers "with the maximum tax advantages and flexibility consistent with" Internal Revenue Code section 529. The bill specifies that the rules may not be any more restrictive than is necessary for the program to qualify for the favorable federal tax treatment allowed under section 529.

"Other higher education expenses"

(sec. 3334.08(A)(20))

Under Internal Revenue Code section 529, funds in a section 529-qualified plan receive favorable tax treatment if used for tuition or for "other higher education expenses," which includes room and board, books, and fees required of all enrollees. Under current law, the Authority may determine the set of expenses that qualify as other higher education expenses, which may be more restrictive than those allowed under section 529. The bill specifies that the set of expenses qualifying as other higher education expenses under the Variable Program may not be more restrictive than necessary for the program to qualify as a section 529 plan.

Investment costs incurred in the operation of the Guaranteed Program

(sec. 3334.11(A))

Continuing law requires the assets of the Ohio Tuition Trust Authority reserved for payment of the Authority's obligations under the Guaranteed Program to be deposited into the Ohio Tuition Trust Fund. All investment fees and other costs incurred by the Authority in connection with its powers to invest the assets of the Ohio Tuition Trust Fund must be paid from the Fund. The bill clarifies that such investment costs include compensation paid to employees, vendors, and any other individual or entity.

Adjustment of price of tuition units

(sec. 3334.07(B))

Continuing law requires the Authority to annually establish the price of tuition units under the Guaranteed College Savings Program for the ensuing twelve-month period. Currently, if the Authority determines during that period that circumstances arise causing the price of tuition units to be insufficient to ensure the actuarial soundness of the Ohio Tuition Trust Fund, the Authority may

adjust the price accordingly. The bill stipulates instead that if circumstances arise during the twelve-month sales period that "may affect" the fund's actuarial soundness, the Authority may, at its discretion, make a price adjustment. It also specifies that no advance notice is required for such a price adjustment.

Authority to contract for sale of tuition units

(sec. 3334.08(A)(10))

Under continuing law, the Authority may contract for services or goods needed by the Authority in carrying out its responsibilities. The bill explicitly states that this permission to contract with an outside entity also may be used for the sale of tuition units under the Guaranteed College Savings Program.

Account termination and refunds under the Guaranteed Program

(sec. 3334.10(A))

Continuing law specifies how to calculate refunds to account owners upon termination of an account under the Guaranteed College Savings Program. The amount of the refund is calculated differently depending upon the reason for the termination. Reasons under current law for which an account may be terminated are the following: (1) death or permanent disability of the beneficiary, (2) the decision of the beneficiary not to attend an institution of higher education and to request termination of the account, (3) completion of a degree by the beneficiary, (4) rollover of the account into an equivalent tuition program in another state, and (5) any other reason allowed by the Authority.

If a Guaranteed Program account is terminated because of the reason described in (1), above, the refund equals the total purchase price of tuition units on account or, if greater, 1% of the weighted average tuition (WAT) times the number of unused tuition units on account, with no administrative fee or penalty assessed. If an account is terminated for the reasons described in (2) or (3), above, the refund equals at least 1% of current WAT times the number of unused units on account minus "reasonable" administrative fees and minus any penalty required for the program to comply with section 529. If an account is terminated for any other allowable reason, the Authority may refund either the amount refundable for reason (1) or the amount refundable for reason (2) or (3).

The bill removes language specifying the allowable reasons for terminating a Guaranteed Program account and allowing the Authority to determine other allowable reasons for account termination. Instead, an account may be terminated for any reason, as allowed under section 529, but differences in the reasons for termination will continue to affect the amount of the refund.

Refund calculations when a Guaranteed Program account is terminated because of the beneficiary's death or disability will continue to equal the purchase price of all unused tuition units on account, or 1% of WAT times the number of unused units on account, whichever is greater, with no administrative fee or penalty assessed (as under current law). If an account is terminated for any other reason, the refund must equal at least 1% of WAT times the number of unused units on account minus "reasonable" administrative fees and minus any penalty required for the program to comply with section 529.

Account termination and refunds under the Variable Program

(sec. 3334.10(B))

Currently, Variable Program accounts may be terminated for any reason upon filing a written "request" with the Authority, but only after a minimum period of time specified by the Authority. The amount of the refund depends on the reason for termination. If the account is terminated because of the death or disability of the beneficiary or because funds in the account are rolled over into another state's section 529 plan, the refund equals the account balance minus any administrative fees. (The Authority is permitted to limit the extent to which an account may be rolled over.) If the account is terminated for any reason other than death or disability or rollover, the refund equals the account balance, minus any administrative fees, and minus any penalty required for the Variable Program to qualify as a section 529 plan.

The bill does not change the refund amounts, but it eliminates the power of the Authority to specify a minimum holding period before a Variable Program account may be terminated, or to limit the extent of rollovers from a Variable Program account to another state's section 529 plan. The bill also requires only that the contributor file a notice of termination with the Authority, rather than a "request" for termination.

Termination of Guaranteed Program account by Authority

(sec. 3334.09(F))

Under current law, the Authority may terminate a Guaranteed Program account if funds in the account have not been applied to pay tuition or other higher education expenses "within a specified period of time." The Authority must try to locate the account owner or beneficiaries, but if the Authority does not locate them, the funds in the account are retained by the Authority.

The bill requires the Authority to wait at least six years before considering the termination of an account. If the Authority terminates an account, it must mail

a notice of termination to the account holder or beneficiary, and if they cannot be located, the funds in the account must be disposed of in the same manner as unclaimed funds, rather than being retained by the Authority.

Adjustment of tuition unit prices; termination of Guaranteed Program

(sec. 3334.12(A))

Currently, the Authority must engage an actuary to evaluate the soundness of the Ohio Tuition Trust Fund each year, and adjust tuition unit prices as necessary to preserve the Fund's actuarial soundness. Such an evaluation also may be made any other time that the Executive Director determines an evaluation is necessary. If the Fund's assets are not sufficient to ensure the soundness of the Fund, the Authority must make mid-year adjustments in the price of tuition units.

The bill provides that, if the Authority finds that such an adjustment in tuition price is likely to diminish the marketability of tuition units to the extent that actuarial soundness is unlikely to be restored, the Authority must terminate the Guaranteed Program and cease selling new tuition units.

Refund of tuition in case of withdrawal from school

(sec. 3334.10(G))

Currently, if a beneficiary withdraws from an institution of higher education before the end of an academic term, a prorated share of any refund of tuition provided by the institution must be returned to the Authority. The share returned must equal the portion of tuition paid from the beneficiary's account under the Guaranteed College Savings Program or the Variable College Savings Program. This share (less any reasonable charges imposed by the Authority) must be credited to the beneficiary's account.

The bill eliminates this procedure for dealing with the early withdrawal of a beneficiary from an institution of higher education. Presumably, the beneficiary or the account owner would keep the tuition refund from the institution and the amount paid from a college savings program for that academic term would remain deducted from the beneficiary's account.

Elimination of restriction on number of account statements

(sec. 3334.11(F)(1))

Continuing law requires the Authority, upon the request of a beneficiary or an account owner under the Guaranteed College Savings Program, to provide an account statement indicating, in the case of the beneficiary, the number of tuition

units purchased on behalf of the beneficiary, or in the case of the account owner, the transactions of the account, including the number of tuition units purchased, used, or refunded. Currently, the beneficiary or account owner may only request one such account statement per year. This restriction is removed by the bill, effectively allowing any number of such requests in a single year.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	10-03-01	p. 936
Reported, S. Education	01-16-02	p. 1319
Passed Senate (33-0)	01-16-02	pp. 1320-1321
Reported, H. Ways and Means	11-21-02	pp. 2114-2115

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