



Bill Rowland

Bill Analysis
Legislative Service Commission

H.B. 173

125th General Assembly
(As Introduced)

Rep. Oelslager

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.
- Authorizes the Authority to establish new college savings programs in accordance with federal law.
- 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.
- Requires the Authority to establish a pricing structure, which may include a pricing schedule, in lieu of establishing a set price for tuition units.
- Specifies that no advance notice is required for an adjustment in the price of tuition units.
- Authorizes the Authority to suspend sales of tuition units, either permanently or temporarily, if an adjustment in the price of tuition units will not improve the actuarial soundness of the Ohio Tuition Trust Fund.
- 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.
- Requires the Authority to wait at least six years before closing a Guaranteed Program account that has not been used during that period.
- 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 costs of the Variable Program.
- Grants explicit authorization to the Authority to contract for the sale of tuition units.
- Clarifies that amounts that can be paid from the Ohio Tuition Trust Fund include compensation paid to employees, vendors, and any other individual or entity responsible for investments, and payments to account owners and designees of account owners.
- Permits the rollover or termination of an account under the Guaranteed Program for any reason by filing written notice with the Authority.
- Changes the method of calculating refunds under the Guaranteed Program when an account is terminated.
- Expands current law to allow certain entities to establish a scholarship program to award scholarships consisting of contributions made to Variable and Guaranteed Program accounts rather than just Guaranteed Program accounts.
- 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.
- Eliminates the current procedure for refunding accounts when a beneficiary is awarded a scholarship, a waiver of tuition, or similar subvention.
- Eliminates procedures for the use of tuition units by nonresident beneficiaries.
- Makes other administrative changes to the college savings programs.

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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.

Change of name to the CollegeAdvantage Savings Plan and authorization for new programs

(R.C. 3334.02(E) and 3334.08(B))

Under the bill, the Guaranteed College Savings Program and the Variable College Savings Program are collectively referred to as the CollegeAdvantage

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 (R.C. 3334.01(I)).

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 savings-type qualified 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. Further, the bill authorizes the Authority to establish new college savings programs under section 529 to benefit the state of Ohio and its citizens. Any such program will be considered a component of the collective CollegeAdvantage Savings Plan.

Terminology changes

(R.C. 3334.01 and 3334.09)

The bill amends and adds various terms in the Tuition Trust Authority Law. Under current law, a purchased credit of the Ohio Tuition Trust Authority is referred to as a "tuition credit." The bill instead refers to "tuition units" and specifies that "tuition units" include tuition credits purchased prior to July 1, 1994. The bill refers to "participation agreement" instead of "payment contract" when referring to agreements entered into by the Authority and a person for the purchase of tuition units. The bill adds the term "account" and defines it to mean the formal record of transactions with respect to funds in the Ohio Guaranteed College Savings Program or the Variable College Savings Program, which transactions relate to the beneficiary designated by the account owner. The term "account owner" replaces the term "purchaser" and means the person signing the CollegeAdvantage Savings Plan participation agreement, who controls withdrawals from the account, is entitled to select or change the designated beneficiary of the account, and receives withdrawals from the account if no beneficiary is designated to receive withdrawals. Finally, "contributor" is defined to mean an account owner, beneficiary, or other person who makes a contribution to an account.

Value of tuition unit

(R.C. 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.

Adjustment of price of tuition units

(R.C. 3334.07(B))

Current law requires the Authority to annually establish the price of tuition units under the Guaranteed College Savings Program for the ensuing 12-month period. The price must be based on sound actuarial principles and, to the extent actuarially possible, reasonably approximate 1% of the weighted average tuition for that academic year plus the costs of administering the program that are in excess of General Revenue Fund appropriations for administrative costs. The bill instead requires the Authority to establish a pricing structure, which may include a pricing schedule, for the purchase of tuition units. Also, all such prices must take into consideration the weighted average tuition for that academic year and future academic years plus the costs of administering the program (without taking into account any General Revenue Fund appropriations the Authority may receive).

Current law also provides that if the Authority determines during a given 12-month sales 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 12-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.

Additional adjustment of tuition unit prices; suspension of Guaranteed Program

(R.C. 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 unit price is likely to diminish the marketability of tuition units to the extent that actuarial soundness is unlikely to be restored, and external economic factors continue to negatively impact the soundness of the program, the Authority may suspend sales of tuition units, either permanently or temporarily. During any such suspension, the Authority must continue to service existing guaranteed college savings accounts.

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

(R.C. 3334.08(A)(23) and 3334.19(F) and (G))

The bill requires the Authority to apply a "reasonable" service charge in a "nondiscriminatory" manner to the Variable College Savings Program for the purpose of reimbursing the Guaranteed College Savings Program for any expense incurred. (R.C. 3334.08(A)(23).)

In addition, the bill creates in the custody of the Treasurer of State the Variable Operating Fund, from which expenses of operating and administering the Variable College Savings Program must be paid. Additionally, other expenses, disbursements, or payments the Authority considers appropriate for the benefit of the CollegeAdvantage Savings Plan or the state or its citizens can be paid from the Fund. Any fees, charges, and other costs imposed or collected by the Authority in operating the variable program must be deposited into the Fund.

Under current 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 adds a fourth priority, to pay or cover other expenditure or disbursement the Authority determines necessary or appropriate. (R.C. 3334.19(F) and (G).)

Administrative rules for Variable Program

(R.C. 3334.08(C))

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"

(R.C. 3334.01(P) and 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. 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 CollegeAdvantage Savings Plan to qualify as a section 529 plan.

Ohio Tuition Trust Fund payments

(R.C. 3334.11(A) and (B))

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. Further, the bill expressly authorizes assets of the Fund to be expended to make payments to account owners and designees of account owners, in addition to beneficiaries and institutions of higher education as under current law.

Authority to contract for sale of tuition units

(R.C. 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.

Agreements with government agencies

(R.C. 3334.08(A)(13))

Current law authorizes the Authority to enter into agreements with any agency of the state or its political subdivisions or with private employers under which an employee may agree to have a designated amount deducted from wages or salary for the purpose of making contributions to a Variable or Guaranteed Program account. The bill instead authorizes such agreements with any governmental agency (not just state or political subdivision agencies), as well as private employers.

Scholarship programs

(R.C. 3334.17(A))

Current law authorizes the state, a political subdivision of the state, and any organization that is exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code to establish a scholarship program to award scholarships consisting of tuition credits to students under a Guaranteed College Savings Program. The bill modifies this provision to authorize such entities to establish a scholarship program to award scholarships consisting of contributions made to a CollegeAdvantage Savings Plan for students. The effect of the modification is to allow such contributions to be made to a Variable College Savings Program account as well as a Guaranteed Program account.

Account termination and refunds under the Guaranteed Program

(R.C. 3334.10(A))

Current 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, unless otherwise provided for in the participation agreement, an account owner may rollover amounts to another

qualified tuition program under section 529 or may terminate the account for any reason by filing written notice with the Authority.

If the account is terminated and the beneficiary is under 18 years old, the Authority must use actuarially sound principles to determine the amount of the refund.² 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 all or part of the amount in a guaranteed college savings program account is liquidated for a rollover to another qualified tuition program under section 529, the rollover amount must be determined in an actuarially sound manner.

Account termination and refunds under the Variable Program

(R.C. 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 provides that the account owner of a Variable Program account may rollover amounts to another qualified tuition program under section 529 as well as terminate the account for any reason. The bill also requires only that the account owner file a written notice of termination with the Authority, rather than a "request" for termination and allows an account owner to receive an amount equal to the account balance, less any applicable administrative fees, regardless of the reason for termination or rollover.

² *The bill does not address termination of an account if the beneficiary is 18 years of age or older.*

Refunds to scholarship programs

(R.C. 3333.10(C))

Under current law, entities that establish programs to award scholarships of tuition units may receive refunds only for just cause with the approval of the Authority. The bill removes the "just cause" condition and the requirement for Authority approval and allows scholarship program refunds upon the filing of a written request with the Authority.

Termination of account by Authority

(R.C. 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 maintains these provisions, but requires the Authority to wait at least six years before considering the termination of an account.

Current law also authorizes the Authority to terminate any tuition payment contract or Variable College Savings Program contract if no purchases or contributions are made for a period of three years or more and there are fewer than five tuition units on account or less than a dollar amount set by rule on account. Before such a termination, the Authority must send a notice explaining any options to prevent termination and must allow a reasonable amount of time to pass.

The bill modifies these provisions to allow the Authority to terminate any CollegeAdvantage Savings Plan participation agreement if no contributions are made for a period of three years or more and the account value is less than a dollar amount set by rule.

Elimination of refunds for beneficiaries receiving scholarships

(R.C. 3334.10(F))

The bill repeals a provision in current law that requires the Authority to refund the value of tuition units if a beneficiary is awarded a scholarship (other than under a scholarship program operated in accordance with the Tuition Trust Authority Law), a waiver of tuition, or similar subvention. Under that provision, each academic term, the Authority must refund to the person designated in the

payment contract, or, in the case of a beneficiary under a scholarship program, to the beneficiary, an amount equal to the value of the tuition units or the amounts in the Variable College Savings Program account that are not needed on account of the scholarship, waiver, or similar subvention.

Refund of tuition in case of withdrawal from school

(R.C. 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 nonresident beneficiary provisions

(R.C. 3334.09(G))

Current law specifies that if, at any time after tuition units are accumulated for a beneficiary and the beneficiary becomes a nonresident of Ohio or the purchaser of the units becomes a nonresident of the state, units purchased or awarded while the beneficiary was a resident may be applied on behalf of the beneficiary toward the payment of tuition at any institution of higher education and other higher education expenses. If the beneficiary enrolls in an Ohio public institution of higher education, current law specifies that the beneficiary is responsible for payment of all nonresident fees charged to out-of-state residents by the institution in which the beneficiary is enrolled. The bill repeals these provisions.

Restrictions on number of account statements

(R.C. 3334.10(D) and 3334.11(E)(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.

With regard to the Variable College Savings Program, existing law provides that upon the request of any beneficiary or contributor, the Authority must provide an account statement indicating certain contributions and disbursements. Under the bill, the Authority must provide such account statements at the request of account owners (but not beneficiaries or contributors other than the account owner).

Effect on eligibility for Job and Family Services programs

(R.C. 5111.015 and 5115.061)

Current law prohibits the Department of Job and Family Services from requiring anyone to terminate a Guaranteed Program tuition payment contract as a condition of eligibility for Medicaid (unless federal law requires such a condition), Disability Assistance, or Disability Assistance Medical Assistance. The bill provides that this prohibition applies to any CollegeAdvantage Savings Plan participation agreement, thus also preventing the termination of a Variable Program agreement as a condition of eligibility for benefits.

General Assembly finding of tax exemption

(R.C. 3334.16)

Under current law, the General Assembly finds that the prepaid tuition program providing for the sale of tuition credits by the Ohio Tuition Trust Authority is an official state function offered through an agency of the state that receives appropriations. Therefore, the Authority is directed by law to assume that the Guaranteed College Savings Program is exempt from federal tax liability. The bill expands these findings by also making them applicable to the Variable College Savings Program, and directs the Authority to assume that that program also is exempt from federal tax liability.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced h0173-i-125.doc/kl	05-06-03	p. 450

