



John Rau

## *Bill Analysis*

Legislative Service Commission

### **H.B. 128**

126th General Assembly  
(As Introduced)

Rep. Allen

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#### **BILL SUMMARY**

- Establishes the Educational Choice Scholarship Program to provide scholarships for students residing in academic emergency and academic watch school districts to attend private schools that register with the Superintendent of Public Instruction.
- Directs the Department of Education to award 18,000 Educational Choice scholarships in fiscal year 2006 and 36,000 scholarships in fiscal year 2007.
- Requires school districts to report to the Department of Education the number of their students enrolled in a registered private school using an Educational Choice scholarship.

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#### **CONTENT AND OPERATION**

##### **Establishment of the Educational Choice Scholarship Program**

(R.C. 3310.01 to 3310.17)

The bill establishes the Educational Choice Scholarship Program to provide scholarships for primary and secondary students residing in "academic emergency" and "academic watch" school districts to use for the sole purpose of paying tuition at private schools.<sup>1</sup> Under the program, the Department of Education is required to award to eligible students up to the number of scholarships set by the General Assembly for the school year (see "**Number of**

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<sup>1</sup> *The Ohio Department of Education (ODE) is required under continuing law to rate each school district's academic performance based on standards adopted by the State Board of Education and the federal No Child Left Behind Act of 2001 (R.C. 3302.03, not in the bill).*

*scholarships*" below). In doing so, the Department first must award scholarships to eligible students who received them in the previous school year, and then must award the remaining scholarships on the basis of a lottery. Students who reside in a Pilot Project Scholarship Program district (currently only the Cleveland Municipal School District) may choose to participate in either that program or the new program.<sup>2</sup>

To participate in the Educational Choice Scholarship Program, the parent of an eligible student, or the student if at least 18 years old, must notify the Department of the student's and parent's names and address, the name of the private school in which the student has been accepted for enrollment, and the amount of the tuition charged by the school. Private schools that wish to enroll students under the program must first register with the Superintendent of Public Instruction and meet other requirements prescribed by the bill (see "*Registered private schools*" below).

### *Eligible students*

(R.C. 3310.01(A) and 3310.03)

To be eligible under the Educational Choice Scholarship Program, a student must meet *both* of the conditions described in (1) and (2) below:

(1) The student's resident district is a school district declared to be in a state of academic emergency or academic watch in the most recent rating of school districts that is published prior to the first day of July of the school year for which a scholarship is sought. The Department of Education rates school districts in August of each year, so, for example, the performance rating applying to scholarships awarded for the 2005-2006 school year (which begins July 1, 2005) is the one published by the Department in August 2004.

(2) During the school year immediately prior to the school year for which a scholarship is sought for the first time, the student either was enrolled in the

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<sup>2</sup> *The Pilot Project Scholarship Program provides scholarships to attend private schools or other public schools or to engage tutors for students in any school district that is or has been under a federal court order requiring supervision and operational management by the Superintendent of Public Instruction. Currently only the Cleveland Municipal School District is such a district. The program targets low-income students, but all students residing in the district are eligible. The maximum annual scholarship amount for students in grades K through 8 is \$2,700 and for students in grades 9 and 10 is \$2,430. No public schools currently accept scholarship students under the program. (R.C. 3313.974 to 3313.979, none in the bill.)*

student's resident school district or was enrolled in private or public school with a scholarship under the Pilot Project Scholarship Program.

The bill specifies that a student who receives a scholarship under the Educational Choice Scholarship Program remains eligible and may continue to receive scholarships in subsequent school years until the student completes grade 12, so long as the student's resident district remains the same, regardless of the district's future academic rating. On the other hand, the Department must cease awarding *first-time* scholarships for students in a particular district if that district ceases to be in a state of academic emergency or academic watch.

### **Scholarship amount**

(R.C. 3310.08 and 3310.09)

The amount of each annual Educational Choice scholarship is the *lesser* of (1) the tuition charged by the private school in which the student is enrolled or (2) a "maximum" amount that is specified in the bill. That maximum amount in fiscal year 2006 is:

- (a) \$4,000 for grades K through 4;
- (b) \$4,500 for grades 5 through 8; and
- (c) \$5,000 for grades 9 through 12.

In future fiscal years, the maximum amount is to be inflated by the rate of change in the Consumer Price Index for the 12-month period ending on June 30 of the previous fiscal year.<sup>3</sup>

### **Number of scholarships**

(R.C. 3310.17; Section 3)

Under the bill, the General Assembly is to prescribe the maximum number of scholarships that may be awarded under the program in each year. The bill specifies that, in fiscal year 2006, the maximum number of scholarships under the program is 18,000 and, in fiscal year 2007, the maximum number is 36,000.

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<sup>3</sup> *The bill specifies use of the Consumer Price Index (all urban consumers, all items) prepared by the U.S. Bureau of Labor Statistics as the measure of inflation for the annual maximum amount.*

### **Scholarship payments**

(R.C. 3310.08)

The bill requires the Department of Education to pay to the parent of each eligible student awarded a scholarship or to the student, if at least 18 years old, periodic partial payments of the scholarship in the same proportion to the total scholarship amount and at the same times as the Department makes payments to community schools (charter schools).<sup>4</sup> The Department also must proportionately reduce or terminate the payments for any student who withdraws from school prior to the end of the school year in the same manner as payments are reduced or terminated for students who withdraw from a community school before the end of a school year. (Community schools are paid monthly a pro rata share of an annual amount based on the number of full-time equivalent students enrolled that month. When a student withdraws, a community school ceases to receive the future monthly pro rata amounts for that student.)

### **Registered private schools**

(R.C. 3310.11 and 3310.12)

The bill specifies that a private school may not receive payments from a parent or student who is paid a scholarship under the program until the chief administrator of the school registers the school with the Superintendent of Public Instruction.<sup>5</sup>

To register, a school must do all of the following:

- (1) The school must indicate in writing its commitment to follow all the program's requirements.
- (2) The school must meet minimum education standards prescribed by the State Board of Education.
- (3) The school must satisfy at least one of the following conditions:
  - (a) It holds a charter granted by the State Board;

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<sup>4</sup> A community school is a public school that operates independent of a school district under a contract with a public or a tax exempt private sponsor.

<sup>5</sup> A similar registration requirement under current law applies to private schools that participate in the Pilot Project Scholarship Program (R.C. 3313.976, not in the bill).

(b) It is accredited by a national organization that accredits schools that teach grades K through 12; or

(c) It has been in continuous operation for not less than five years, during which time the school has served not fewer than 2/3 the number of grade levels that the school will serve as a registered private school.

(4) The school must agree to elect to administer all of the applicable state achievement tests.

(5) The school must not discriminate on the basis of race, religion, national origin, or ethnic background.

(6) If the school does not have positions available for all applicants who wish to enroll in the school under the program, the school fills the available positions on a random selection basis or a first-come first-served basis, or some combination of both, except that the school may give priority to students previously enrolled in the school or to students who live in the same household as a student currently or previously enrolled.

(7) If the school is not chartered by the State Board, the school must agree to request criminal records checks for all employment applicants who if hired would be responsible for the care, custody, or control of a child, in the same manner required of a school district.<sup>6</sup> Moreover, the school must agree not to hire certain applicants for positions requiring the care, custody, or control of a child if their criminal records checks reveal any of several criminal violations specified under continuing law.<sup>7</sup>

(8) The school must agree to retain on file accurate and complete documentation of employee criminal records checks, student attendance records, and records of tuition charges and payments for each student for whom an Educational Choice scholarship is paid.

In addition, each registered private school must file either of the following with the Superintendent of Public Instruction:

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<sup>6</sup> *R.C. 109.57(F)(2) and (J) and 109.572(E) and (F)(6) specify that the Superintendent of the Bureau of Criminal Identification and Investigation is to conduct criminal records checks for applicants for employment in these registered private schools. A similar requirement currently applies to applicants for employment in school districts, community schools, and chartered nonpublic schools.*

<sup>7</sup> *R.C. 3319.39, not in the bill.*

(1) A surety bond payable to the state in an amount equal to the *greater* of \$500,000 or the aggregate amount of scholarships paid under the program to students enrolled in the school in the previous school year; or

(2) An unconditional guarantee by a third party for payment of any moneys that the school might owe to the state. The third party must have a net worth of not less than \$10 million, as determined by the Auditor of State.

**Excess tuition charges**

(R.C. 3310.13 and 3310.14)

The bill prohibits a registered private school from charging any Educational Choice scholarship student whose family income is less than 200% of the federal poverty guidelines a tuition fee that is greater than 105% of the total scholarship amount paid for that student.<sup>8</sup> In addition, the school must permit a scholarship student's family, at the family's option, to provide volunteer services in lieu of cash to pay all or part of the amount of the school's tuition not paid for by the scholarship.

**Revocation of a school's registration**

(R.C. 3310.15)

The bill requires the Superintendent of Public Instruction to revoke the registration of any registered private school if, after a hearing, the Superintendent determines that the school is in violation of any of the registration requirements or the provisions regarding excess tuition charges (see above).

**Transportation of scholarship students**

(R.C. 3310.04)

The bill specifies that Educational Choice scholarship students are entitled to transportation to and from the private schools they attend in the manner prescribed under continuing law. That law requires school districts to provide transportation to nonpublic school students in grades K to 8 who reside in the district and who live more than two miles from the school they attend. Districts may also transport high school students to and from their nonpublic schools. A district, however, is not required to transport students of any age to and from a nonpublic school if the direct travel time by school bus from the district school the

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<sup>8</sup> The 2005 federal poverty guideline for a family of three is \$16,090. 200% of that amount is \$32,180.

student would otherwise attend to the nonpublic school is more than 30 minutes. Districts are eligible for state subsidies for transporting nonpublic school students.<sup>9</sup>

**State Board of Education rulemaking authority**

(R.C. 3310.16)

The bill requires the State Board to adopt rules that prescribe procedures for the administration of the Educational Choice Scholarship Program that pertain to the registration of private schools; application for and determining eligibility for scholarships; calculating, paying, and accounting for scholarship awards; and monitoring compliance by private schools with program requirements. The bill also states that the State Board or the Department of Education may not require registered private schools to comply with any education laws or rules or other requirements that are not specified under the program's provisions if they otherwise would not apply to nonpublic schools.<sup>10</sup>

**School district reporting of the number of scholarship students**

(R.C. 3317.03(B)(3))

The bill requires each school district annually to report the number of its resident students enrolled in a registered private school under the Educational Choice Scholarship Program. But a district is not authorized to include those students in its average daily membership for purposes of state funding.<sup>11</sup>

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<sup>9</sup> R.C. 3317.022 and 3327.01, neither section in the bill.

<sup>10</sup> Some requirements in continuing law already apply to nonpublic schools. For example, a chartered nonpublic school must comply with many but not all of the provisions that apply to school districts, such as high school curriculum and diploma requirements and immunization record requirements. In addition, all schools, regardless of whether they are public or private or are chartered or nonchartered, must comply with state and local health and safety regulations.

<sup>11</sup> A similar reporting provision applies to the reporting of students under the Pilot Project Scholarship Program (R.C. 3317.03(B)(3)). Nevertheless, under that program, the Pilot Project school district (Cleveland) may include in its average daily membership the kindergarten students and other students who are participating in the program for the first time (R.C. 3317.03(I)(2)).

**Purpose statement**

(R.C. 3310.06)

The bill states that it is the policy adopted by the General Assembly that the Educational Choice Scholarship Program is one of several options available for students enrolled in academic watch or academic emergency school districts. It further states that those students may choose to enroll in the schools of the student's resident district, in community schools, in the schools of another school district pursuant to an open enrollment policy, in registered private schools with or without an Educational Choice scholarship, or in other schools as the law may provide. Those other choices might include, for example, enrolling in another school district or in some other type of private school and paying tuition to that district or private school.

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**HISTORY**

ACTION	DATE	JOURNAL ENTRY
Introduced	03-15-05	p. 317

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