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**H.B. 122**  
**133rd General Assembly**

## Bill Analysis

**Version:** As Introduced

**Primary Sponsor:** Rep. Koehler

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### Summary

- Beginning with the 2020-2021 school year, creates the Opportunity Scholarship Program to provide students with scholarships to attend chartered nonpublic schools, for which eligibility and scholarship amounts are based on family income.
- Eliminates the Educational Choice (Ed Choice) Scholarship Program and Pilot Project (Cleveland) Scholarship Program.
- Qualifies a student for the Opportunity Scholarship Program if the student's family income is at or below 400% of the federal poverty guidelines, and either:
  1. On and after July 1, 2019, the student was not enrolled in a chartered nonpublic school during the school year prior to the first school year for which a scholarship is sought; or
  2. The student was enrolled in the eighth grade in a chartered nonpublic school not under a state scholarship during the school year prior to the first school year for which a scholarship is sought.
- Qualifies a student for the Opportunity Scholarship Program and the full scholarship amount if, during the 2019-2020 school year, the student or the student's sibling received a scholarship under the Ed Choice Scholarship Program or Cleveland Scholarship Program regardless of family income.
- Establishes maximum scholarship amounts at \$5,000 for students in grades K-8, and at \$7,500 for students in grades 9-12, but reduces scholarships amounts for students who qualify based on family income and whose family income increases.
- Finances scholarships directly through the foundation funding appropriation item of each biennial operating budget act.
- Establishes an education savings account for a student whose scholarship exceeds the tuition and fees charged by the student's chartered nonpublic school to pay for other specific primary and secondary education expenses.

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## Detailed Analysis

### Opportunity Scholarship Program – Introduction

The bill eliminates the Educational Choice (Ed Choice) Scholarship Program and Pilot Project (Cleveland) Scholarship Program, and establishes a new scholarship program based on family income, entitled the Opportunity Scholarship Program. Beginning with the 2020-2021 school year, the new scholarship program provides income-based scholarships to students to pay tuition and fees at chartered nonpublic schools. It also “grandfathers” students who received an Ed Choice or Cleveland scholarship during the 2019-2020 school year and their siblings, by qualifying them for the bill’s new scholarship.

The new scholarships are paid directly from appropriations of the General Assembly and are not deducted from any district accounts, as in the case of the existing scholarship programs. The scholarships may be used at any chartered nonpublic school.

The bill also provides an education savings account for each student whose scholarship exceeds the tuition and fees charged by the student's school. Funds credited to that account may be used for other primary and secondary educational expenses.

The bill does not affect the Autism or Jon Peterson Special Needs Scholarship Programs.

For a discussion of the state's current scholarship programs, see "**Background on current scholarship programs**" below.

## **Eligibility**

A student qualifies for the Opportunity Scholarship Program if the student's family income is at or below 400% of the federal poverty guidelines and the student meets either of the following conditions:

1. On and after July 1, 2019, the student was not enrolled in a chartered nonpublic school during the school year prior to the first school year for which a scholarship is sought; or
2. The student was enrolled in the eighth grade in a chartered nonpublic school not under a state scholarship during the school year prior to the first school year for which a scholarship is sought.<sup>1</sup>

The poverty guideline for 2019 for a family of four is \$25,750.<sup>2</sup>

In addition, a student automatically qualifies for the Opportunity Scholarship Program if, during the 2019-2020 school year, the student or the student's sibling received a scholarship under the Ed Choice Scholarship Program or Cleveland Scholarship Program regardless of family income.<sup>3</sup>

## **Continuing eligibility**

A student may continue to receive a scholarship under the Opportunity Scholarship Program in subsequent school years until the student completes 12<sup>th</sup> grade, as long as (1) the student's family income does not exceed 400% of the federal poverty guidelines, except for students who are automatically qualified due to previously receiving an Ed Choice or Cleveland scholarship, (2) the student takes each state achievement assessment prescribed for the student's grade level, (3) the student is not absent for more than 20 days that the school is open for instruction, not including excused absences, and (4) the student is not disqualified by the Auditor of State for misuse of funds in the education savings account (see below).<sup>4</sup>

Provisions (2) and (3) above also apply to Ed Choice scholarship students under current law. Provision (2) above applies to Cleveland Scholarships under current law.

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<sup>1</sup> R.C. 3310.03(A)(1).

<sup>2</sup> See U.S. Department of Health and Human Services, Office for Planning and Evaluation, U.S. Federal Poverty Guidelines at <https://aspe.hhs.gov/poverty-guidelines>.

<sup>3</sup> R.C. 3310.03(A)(2).

<sup>4</sup> R.C. 3310.03(B).

## Application for scholarship

A student's parent, or student if 18 years old, who is seeking a scholarship under the Opportunity Scholarship Program must submit an application to the Department of Education. The bill also allows a chartered nonpublic school to submit an application on behalf of and with the permission of a student's parent or a student, if 18 years old.

Within 30 days after receiving an application, the Department must determine whether the student meets the eligibility requirements and approve or deny the application. The Department must give an approved student a certificate of scholarship approval that is valid for six months and includes the student's scholarship amount. The Department must award a scholarship when a student is accepted for enrollment in a chartered nonpublic school and when the school notifies the Department of the student's enrollment.<sup>5</sup>

### Application periods

Two application periods must be conducted each year by the Department, as follows:

1. For students who apply in the school year prior to the school year for which a scholarship will be used, the application period begins not later than November 1 and ends July 31.
2. For students who apply to use a scholarship for the school year in which the application is submitted, the application period begins not later than October 1 and ends April 15.<sup>6</sup>

### Scholarship amounts

The bill sets the maximum scholarship amounts at \$5,000, for students in grades K-8, and at \$7,500 for students in grades 9-12. Students receive the maximum scholarship amount if they qualify because they received an Ed Choice or Cleveland scholarship in the 2019-2020 school year, regardless of family income. However, for all other eligible students, the bill prescribes a tiered system for adjusting the scholarship amount, as described in the table below.<sup>7</sup>

Family income	Scholarship amount
At or below 200% of the federal poverty guidelines	Maximum scholarship amount
Above 200% but below 400% of the federal poverty guidelines	The maximum scholarship amount, reduced by 0.5% for every 1% increase in the student's family income

<sup>5</sup> R.C. 3310.07.

<sup>6</sup> R.C. 3310.16.

<sup>7</sup> R.C. 3310.09(A) and (B).

Family income	Scholarship amount
At 400% of the federal poverty guidelines	50% of the maximum scholarship amount
Above 400% of the federal poverty guidelines	No longer eligible to receive a scholarship

### **Increased scholarship amount in future years**

The bill provides for an increase in the full scholarship amounts if the “formula amount” used in the state school funding formula is increased by the General Assembly. The resulting scholarship amount is the full amount awarded in the previous school year increased by the same percentage by which the formula amount from the previous school year was increased.<sup>8</sup>

### **Financing and payment of scholarships**

Scholarships under the Opportunity Scholarship Program are financed differently from most Ed Choice scholarships, which are generally funded through a “deduct and transfer” method (see “**Background on state scholarship programs**” below). Opportunity scholarships, instead, are financed directly through the foundation funding appropriation item of each biennial operating budget act.<sup>9</sup>

The Department of Education must pay the scholarship amount to the chartered nonpublic school on behalf of the parent of each student for whom a scholarship is awarded. Payments must be made on a periodic basis over the course of the school year, and payments must be proportionately reduced or terminated for any student who withdraws from a chartered nonpublic school before the end of the school year or who enrolls in a chartered nonpublic school after the beginning of the school year.<sup>10</sup>

### **Maximum number of available scholarships**

The bill limits the number of scholarships that may be awarded to 60,000 per year. If the number of applications for scholarships for any school year exceeds 90% of the maximum number of scholarships available for the school year, the maximum number of available scholarships for the following school year must increase by 10%. The increased number of scholarships established for the following school year will be the new maximum number available in subsequent school years until another adjustment is triggered.<sup>11</sup>

### **Priority for awarding scholarships**

The bill establishes a priority system for awarding scholarships in school years when applications exceed the number of available scholarships. The priority system awards scholarships as follows:

<sup>8</sup> R.C. 3310.09(C). The formula amount is prescribed in R.C. 3317.02, not in the bill.

<sup>9</sup> R.C. 3310.08(C) and 3317.03.

<sup>10</sup> R.C. 3310.08(B).

<sup>11</sup> R.C. 3310.02(A) and (C).

1. First, to eligible students who received a scholarship in the prior school year;
2. Second, to eligible students with family incomes at or below 200% of the federal poverty guidelines;
3. Third, to eligible students awarded on the basis of a lottery.<sup>12</sup>

## **Education savings accounts**

If the amount of a scholarship under the Opportunity Scholarship Program exceeds the tuition and fees charged by the student's school, the excess must be paid by the Department to an "education savings account" established for that student. Unlike the scholarship payments themselves, which are paid periodically throughout a school year, the excess, if any, may not be credited to the student's account until the end of the school year and, then, only if the student is still enrolled in a chartered nonpublic school.<sup>13</sup>

The Department must transfer to the Treasurer of State the excess amount that has been credited to each student's account. The Treasurer of State must deposit the aggregate amount transferred for all applicable students into a fund or account the Treasurer determines is suitable for the amount transferred. Moneys transferred to each student's account must be held in trust for the benefit of the student. The Department of Education must maintain the record of each student's account.<sup>14</sup>

Any interest accrued on moneys transferred to the Treasurer of State must first be used for direct costs incurred in administering scholarship funds. Any remaining interest must be credited to the Department of Education for oversight and parental outreach for the Opportunity Scholarship Program.<sup>15</sup> The Treasurer of State must annually report to the Governor and General Assembly (1) the total amount of interest credited to the Department of Education and (2) the total amount of moneys from education savings accounts transferred to the Department upon the termination of an education savings account (see below).<sup>16</sup>

### **Authorized use of funds**

Moneys credited to an education savings account can be used by the student's parent, or student if 18 years old, for any of the following purposes:

1. Tuition and fees at a chartered nonpublic school;
2. Textbooks required by a chartered nonpublic school;
3. Payment for a tutor or tutoring services, as approved by the Department of Education;

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<sup>12</sup> R.C. 3310.02(D).

<sup>13</sup> R.C. 3310.10(B).

<sup>14</sup> R.C. 3310.17(B)(1).

<sup>15</sup> R.C. 3310.17(B)(2).

<sup>16</sup> R.C. 3310.17(F).

4. Payment for a private online learning program and any associated fees, as approved by the Department;
5. Costs related to advanced standing programs and any exams administered under such programs; or
6. Courses offered by a school district, as approved by the district board, for which the district is authorized to charge tuition or fees.<sup>17</sup>

### **Termination of education savings account**

As long as there are moneys credited to the student's education savings account, the Department must maintain each account unless any of the following occurs:

1. The student graduates high school;
2. The student dies before graduating high school;
3. The student is no longer a resident of Ohio;
4. The student enrolls in a primary or secondary school that is not located in Ohio; or
5. The student or the student's parent uses the funds from the account for an unauthorized purpose.<sup>18</sup>

In the event of any occurrence described above, the moneys must be transferred to the Department for oversight and parental outreach for the Opportunity Scholarship Program.<sup>19</sup>

### **Audit of education savings accounts**

The bill authorizes the Auditor of State to conduct audits of any education savings account. It also requires the Auditor of State annually to conduct random audits of education savings accounts. If funds are found to be used in a manner not permitted under the bill, the Auditor of State is authorized to do the following:

1. Disqualify the student from participation in the Opportunity Scholarship Program. Disqualification also results in the forfeiture of moneys in an education savings account.
2. Refer the case to the proper law enforcement agency, if the Auditor believes there is sufficient evidence that substantial misuse of funds occurred by either the parent or the educational service provider.<sup>20</sup>

### **Tuition and fees charged by schools**

In determining the appropriate tuition to charge a scholarship student, each chartered nonpublic school must apply any tuition discounts or rates for which the student qualifies,

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<sup>17</sup> R.C. 3310.17(C)(1).

<sup>18</sup> R.C. 3310.17(D).

<sup>19</sup> R.C. 3310.17(E).

<sup>20</sup> R.C. 3310.17(G).

including sibling discounts or child of employee discounts. The tuition and fees charged must be uniformly imposed on similarly situated students.<sup>21</sup>

The bill also permits a chartered nonpublic school to charge any scholarship student up to the difference between the scholarship amount and the school's regular tuition and uniformly imposed fees. Each 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 school's tuition not covered by the scholarship.<sup>22</sup>

Finally, the bill requires each chartered nonpublic school that charges a scholarship student an additional amount to annually report to the Department of Education the number of students charged and the average of the amounts charged to such students.<sup>23</sup>

## **Assessments and data**

As is the case under current law for the existing state scholarship programs, the bill requires (1) chartered nonpublic schools that enroll students with a scholarship under the Opportunity Scholarship Program to administer the state achievement assessments to the scholarship students and to report their scores to the Department of Education, and (2) the Department to report performance data derived from the achievement assessments taken by those students. The Department must post the performance data on its website by November 1 of each school year and distribute it to the parent of each student eligible to participate in the scholarship program.<sup>24</sup>

In reporting performance data for scholarship students, the Department may not report data that is statistically unreliable or that could result in the identification of individual students. The bill prohibits the Department from reporting data for any group that contains less than ten scholarship students. Therefore, for example, if a chartered nonpublic school enrolls 20 scholarship students across several grade levels, the Department could report the schoolwide assessment results, but there may be too few students in a particular grade or racial group to report the results by grade level without endangering a student's privacy.<sup>25</sup>

The Department must provide the parent of each scholarship student with a comparison of the student's achievement assessment scores with the average scores of similar students enrolled in the school district-operated building the scholarship student would otherwise attend. For this purpose, the scholarship student must be compared to students of similar age, grade, race and ethnicity, gender, and socioeconomic status.<sup>26</sup>

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<sup>21</sup> R.C. 3310.10(C).

<sup>22</sup> R.C. 3310.13(A).

<sup>23</sup> R.C. 3310.13(B).

<sup>24</sup> R.C. 3310.14 and 3310.15(A) and (C).

<sup>25</sup> R.C. 3310.15(C).

<sup>26</sup> R.C. 3310.15(E).



## Specifications for performance data

The performance data must be grouped by school district (including all participants in the program from that district), by chartered nonpublic school (including all participants enrolled in that school), and by state (including all participants statewide). The data also must be disaggregated within each group by (1) grade level, (2) race and ethnicity, (3) gender, (4) students who have participated in the scholarship program for three or more years, (5) students who have participated between one and three years, (6) students who have participated for one year or less, and (7) economically disadvantaged students.<sup>27</sup>

Finally, the student performance data must include both an academic achievement component, as measured by proficiency rates, and a growth component, as measured by value-added progress dimension. The growth component must use up to three years of value-added data as available and must include the calculated score and a designation determined as follows:

1. "Above average progress," which reflects a score that is at least one standard error of measure above the mean score;
2. "Average progress," which reflects a score that is between one standard error of measure above the mean score and one standard error of measure below the mean score; and
3. "Below average progress," which reflects a score that is more than one standard error of measure below the mean score.<sup>28</sup>

## Transportation

As under the existing state scholarship programs, students attending a chartered nonpublic school under the Opportunity Scholarship Program are entitled to school district transportation to and from the chartered nonpublic school they attend, in the manner prescribed under continuing law.<sup>29</sup>

### Background on student transportation

Currently, each school district must transport all students in grades K to 8 residing in the district to and from their assigned school, or to and from the nonpublic, community or STEM school they attend, if that school is more than two miles from their home. A district also may transport high school students; but if a district transports high school students to its own schools, it must transport nonpublic, community and STEM high school students on the same basis. However, a district is not required to transport a nonpublic, community or STEM school student, regardless of grade level, if the direct travel time between the district school to which the student otherwise would be assigned and the student's nonpublic, community or STEM school exceeds 30 minutes. A district may offer a payment in lieu of transportation to the

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<sup>27</sup> R.C. 3310.15(A) and (B).

<sup>28</sup> R.C. 3310.15(D).

<sup>29</sup> R.C. 3310.04.

parent of a particular student if the district determines that it is impractical to transport that student.<sup>30</sup>

## Rulemaking

The bill requires the State Board of Education to adopt rules that prescribe procedures for the administration of the Opportunity Scholarship Program. The bill also states that the State Board and the Department may not require chartered nonpublic schools to comply with any education laws, rules, or other requirements that are not specified under the bill's provisions, if they otherwise would not apply to a chartered nonpublic school.<sup>31</sup> Finally, the bill requires the Treasurer of State and the State Board of Education jointly to adopt rules for the establishment and administration of student education savings accounts, which must include procedures for students for whom an excess scholarship amount has been determined and procedures for the administration and disbursement of moneys credited to an education savings account.<sup>32</sup>

All rules must be adopted so that they are implemented beginning with the 2020-2021 school year, and the Department of Education must begin preparations to implement the Opportunity Scholarship Program so that a scholarship can be used beginning with the 2020-2021 school year.<sup>33</sup>

## Background on current scholarship programs

### Educational Choice Scholarship Program

The Educational Choice (Ed Choice) Scholarship Program operates statewide in every school district except Cleveland to provide scholarships for students who (1) are assigned or would be assigned to district schools that have persistently low academic achievement or (2) are from low-income families. Under the income-based portion of the program, a student qualifies if the student's family income is 200% of poverty or below, but a student can continue to receive a reduced scholarship as family income increases up to 400% of poverty. Students may use their scholarships to enroll in participating chartered nonpublic schools. The amount awarded under the program is the lesser of the actual tuition charges of the school or the maximum scholarship award.

The maximum scholarship award is \$4,650 for students in grades K-8 and \$6,000 for students in grades 9-12. For students who qualify based on the performance of their resident districts' schools, the scholarships are deducted from the districts' state aid accounts. For students who qualify based on family income, the scholarships are paid from a specific appropriation of the General Assembly.<sup>34</sup>

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<sup>30</sup> R.C. 3327.01, not in the bill.

<sup>31</sup> R.C. 3310.06.

<sup>32</sup> R.C. 3310.17(A).

<sup>33</sup> Section 5.

<sup>34</sup> Current R.C. 3310.01 to 3310.17, repealed by the bill.

## Pilot Project (Cleveland) Scholarship Program

The Cleveland Scholarship Program allows students who are residents of the Cleveland Municipal School District to obtain scholarships to attend participating nonpublic schools. The scholarships are the lesser of the tuition charged by the alternative provider or the maximum scholarship award. The maximum scholarship award is \$4,650 for students in grades K-8 and \$6,000 for students in grades 9-12. In general, scholarship students are not counted in Cleveland's average daily membership (ADM) for funding purposes. A portion of Cleveland's state aid has been earmarked in the state operating budget to be used to help fund this program. The rest of the funding for the program comes from the state general revenue funds (GRF) without any deduction from Cleveland.<sup>35</sup>

## Autism Scholarship Program

The Autism Scholarship Program provides scholarships to autistic students in any of grades preK-12 whose parents choose to enroll the student in an approved special education program other than the one offered by the student's school district. The scholarships are the lesser of the total fees charged by the alternative provider or \$27,000. Each Autism Scholarship student is included in the student count of the student's resident district for purposes of the state funding formula. The amount of the scholarship is then deducted from the resident district's state aid and paid to the alternate provider.<sup>36</sup>

## Jon Peterson Special Needs Scholarship Program

The Jon Peterson Special Needs Scholarship Program is similar to the Autism Scholarship Program except that it is available to all disabled students in grades K-12. Funding for the program is provided in the same way as that of the Autism Scholarship Program, through a transfer of state aid from the resident district to the alternate provider. Likewise, scholarship students are also counted in their district's count for the purposes of the state funding. Under current law, the amount of the scholarship cannot exceed \$27,000 and is the lesser of the tuition charged by the alternate provider or the special education funding calculated for the student, which is the formula amount plus the applicable special education amount used to calculate funding for the student under the formula for traditional school districts.<sup>37</sup>

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## History

Action	Date
Introduced	03-05-19

H0122-I-133/ts

<sup>35</sup> Repealed R.C. 3313.974 to 3313.979.

<sup>36</sup> R.C. 3310.41 to 3310.43, none in the bill.

<sup>37</sup> R.C. 3310.51 to 3310.64, none in the bill.