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S.B. 89
133rd General Assembly

Fiscal Note & Local Impact Statement

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Version: As Passed by the House

Primary Sponsor: Sen. Huffman, M.

Local Impact Statement Procedure Required: No

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Highlights

EdChoice Scholarship Program

- Subject to certain exceptions, the bill eliminates eligibility for first-time performance-based Educational Choice (“EdChoice”) scholarships beginning in the 2020-2021 school year. Thus, the bill will decrease deductions of state foundation aid to pay for performance-based scholarships over time before they are eventually phased out. Also, school district expenditures may increase to educate public students that otherwise would have taken a scholarship to attend a nonpublic school.
- The bill increases the base family income eligibility level for income-based EdChoice scholarships (renamed by the bill to Buckeye Opportunity scholarships) from 200% of the federal poverty level (FPL) to 250%, but eliminates eligibility for a scholarship if a student’s family income rises above 300% FPL. This may increase or decrease the number and amount of scholarships awarded. Ultimately, the number of scholarship awards is limited to the program’s appropriation.

Academic distress commissions; School Transformation Board

- The bill’s dissolution of existing academic distress commissions (ADCs) by June 30, 2020, and moratorium on the creation of new ADCs until January 1, 2024, may reduce state expenditures during that time, primarily because the state will not need to pay the compensation of the chief executive officer of any new ADCs.
- The bill establishes the School Transformation Board (STB) to recommend a replacement intervention to ADCs and assist with a review of and recommendations for the state-level school improvement process. The Board may hire an executive director and any necessary staff, though the bill does not appropriate any funds for the STB.

Other provisions

- Affected joint vocational school districts (JVSDs) will have increased revenue due to the bill's provision requiring JVSDs to be compensated like a traditional school district for the loss of tax revenue as a result of a tax exemption in an enterprise zone, depending on the specific compensation agreement.
- The Ohio Department of Education's administrative costs may increase due to various provisions of the bill.
- Fee revenue to the Teacher Licensure and Certification Fund (Fund 4L20) may increase minimally each year as a result of changes the bill makes to temporary teaching permits.
- The bill limits the circumstances in which a community school fiscal officer may be held liable for a loss of public funds, likely preventing a community school from recovering the cost of improper payments in some cases. Such situations appear to be rare. The amount of any unrecovered losses will vary depending on the circumstances of each case, but could be more than minimal.
- Fewer school districts will have the opportunity to transfer territory in certain circumstances.

Detailed Analysis

The bill makes a number of changes related to various aspects of the Educational Choice ("EdChoice") Scholarship Program, career-technical education, academic distress commissions (ADCs), and other provisions regarding primary and secondary education. Provisions with notable fiscal effects are discussed below.

Educational Choice Scholarship Program

Performance-based scholarships

The performance-based EdChoice Scholarship Program provides scholarships to students, other than those residing in the Cleveland Municipal School District, who attend or who would otherwise be entitled to attend a school that meets one of a number of conditions related to low performance on the state report card. Students use the scholarships to attend 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. In general, scholarship students are counted in the resident district's student count in order to calculate state aid. The amount of the scholarship is deducted from the state foundation aid of the resident district and transferred to the educating school.

The recently enacted S.B. 120 appropriates \$10 million from the GRF in FY 2021 to directly pay a limited number of performance-based EdChoice scholarships for students who are eligible for the first time for the 2020-2021 school year. That act limits the number of first-time scholarships that may be awarded for these students to only those that are funded by this appropriation. Also under that act, scholarships for students who were eligible for the performance-based program in both the 2019-2020 and 2020-2021 school years will continue to be financed by a deduction of foundation aid of the student's resident school district in FY 2021.

Beginning with the 2020-2021 school year, the bill prohibits the Ohio Department of Education (ODE) from awarding first-time performance-based EdChoice scholarships, except for (1) students awarded a directly paid scholarship under S.B. 120 and (2) certain students whose sibling received a performance-based scholarship in the 2019-2020 school year. Students who receive a performance-based scholarship for the first time under S.B. 120 or the bill or who received one prior to the bill's effective date keep their scholarship until they complete twelfth grade, provided they continue to meet certain conditions. Scholarships for these students, other than those that are directly paid in FY 2021 under S.B. 120, will be deducted from the foundation aid of the student's resident school district. In FY 2020, roughly 30,000 students have been awarded a performance-based scholarship, with awards totaling about \$149 million. There are an average of about 2,300 scholarship recipients in each grade level. As scholarship recipients graduate high school or otherwise leave the program, deductions of school district foundation aid will phase down over time before eventually being eliminated. Also, school district expenditures may increase to educate public students that otherwise would have taken a scholarship to attend a nonpublic school.

Because the scholarship amount is deducted from state foundation aid payments, a change in the number of scholarship students generally will have no direct fiscal effect on the state. Note that H.B. 166 suspends the operation of the state foundation formula for FY 2020 and FY 2021 and, instead, provides each district with the same foundation aid allocation as was received in FY 2019.

Income-based scholarships (renamed Buckeye Opportunity scholarships)

Since FY 2014, income-based EdChoice scholarships (renamed "Buckeye Opportunity scholarships" by the bill) have been phased in for students whose family income is at or below 200% of the federal poverty level (FPL), regardless of the academic rating of the school they would otherwise attend. Unlike the performance-based program, students qualifying for EdChoice under the income-based program are not counted in their resident district's student count for funding purposes and, accordingly, deductions of state foundation aid do not fund the scholarships. Instead, the scholarships are paid directly by the state from GRF appropriations. This program has been phased in over time by adding a new grade level each year. The number of scholarships awarded is limited by the appropriation. In FY 2019, \$44.6 million was spent by the state to fund these scholarships, which covered approximately 10,800 students in grades K-5. In FY 2020, 12,360 students in grades K-6 have been awarded scholarships. Beginning in FY 2021, a provision in H.B. 166 expands eligibility to all students entering grades K-12 for the first time. H.B. 166 appropriates \$57.2 million in FY 2020 and \$121.0 million in FY 2021 for income-based scholarships.

Under current law, a student is eligible for a first-time scholarship if the student's family income is at or below 200% FPL. Once a student receives a scholarship, the student may continue to receive one, at a prorated amount, if the student's family income increases above 200% FPL up to a maximum of 400% FPL. The bill increases the initial eligibility threshold from 200% FPL to 250% FPL. This change will tend to increase the number of initial scholarships awarded and the amount of the scholarship for students with family income between 200% FPL and 250% FPL. However, the bill decreases the maximum threshold to 300% FPL and adjusts the prorated maximum amount for a student receiving a scholarship whose family income is above

the initial eligibility threshold, as illustrated in the table below. This change will tend to decrease the number and amount of scholarships awarded.

Two other provisions may increase the number of scholarships. The bill makes eligible for an income-based scholarship a student whose sibling received an income-based scholarship in the prior school year. In addition, beginning with the 2021-2022 school year, the bill specifies that a student who received a performance-based scholarship for the previous school year but whose family income qualifies the student for the Buckeye Opportunity scholarship is no longer eligible for a performance-based EdChoice scholarship and is instead eligible for the Buckeye Opportunity scholarship. A student who receives the Buckeye Opportunity scholarship in this manner remains eligible for the scholarship until the student completes twelfth grade at 100% of the full scholarship amount, regardless of any changes in the student's family income. Ultimately, the number of scholarship awards is limited by the program's appropriation.

Comparison of Prorated Maximum Scholarship Amounts			
Current Law		The Bill	
Income Ratio	Percent of Maximum Scholarship	Income Ratio	Percent of Maximum Scholarship
At or below 200%	100%	At or below 250%	100%
200% to 300%	75%	250% to 275%	75%
300% to 400%	50%	275% to 300%	50%
Above 400%	0%	Above 300%	0%

The bill also changes the priority of scholarship awards in the case when the appropriation is insufficient to fund scholarships for all eligible students who apply. The priority of scholarship awards does not have a fiscal effect on the state.

School improvement initiatives

Academic distress commissions

The bill dissolves the three existing ADCs (for the East Cleveland, Lorain, and Youngstown city school districts) and places a moratorium on the creation of any new ADCs until 2024. For existing ADCs, the bill requires a transition period in which the ADC relinquishes managerial, operational, and instructional control to the district board of education. The bill requires the district to operate under the ADC until June 30, 2020, and requires ODE to pay the remainder of the CEO's contract. The bill also permits the affected districts to hire the former ADC CEO as the district superintendent and to request ODE to reimburse the difference between the two contracts. Under current law, the state pays the compensation of an ADC's CEO. The bill potentially lowers state expenditures during the period of the moratorium, as the state will not have to pay a CEO's salary during that time. As a point of reference, ODE indicated that total annual compensation for current CEOs is approximately \$352,000.

School Transformation Board

The bill establishes a new agency – the School Transformation Board (STB) – to make recommendations for a replacement intervention system for ADCs and to assist with review of and recommendations for the state-level school improvement process. The Board’s governing authority consists of nine members: the Superintendent of Public Instruction and the Chancellor of Higher Education (or their immediate subordinates if so designated), three individuals appointed by the Governor, and four members of the General Assembly. The bill permits the STB to hire an executive director and any necessary staff to carry out STB duties but does not appropriate any funds for these purposes.

Department of Education study

The bill may increase the administrative costs of ODE by requiring the Department, in collaboration with the STB, to review the current state-level process and programs for school and district improvement, the budget requirements necessary to support the improvement process, and to make recommendations to the State Board of Education to improve that process. All three entities are required to ensure local improvement efforts are aligned with the state-level improvement process and the federal Elementary and Secondary Education Act (ESEA). The bill also requires the Superintendent to provide annual progress reports on the state-level improvement process to the STB by October 31st of each year.

School building restructuring

The bill repeals the law that requires a school district to restructure any school building that is ranked in the lowest 5% of all public schools by performance index score for three consecutive years and meet certain additional criteria. The bill may decrease costs for school districts that otherwise would have been required to implement a restructuring action, depending on the particular action chosen and implementation decisions made by the district.

Compensation of JVSDs located in enterprise zones

The bill requires that a joint vocational school district (JVSD) be compensated at the same rate and under the same terms as a school district when a legislative authority of a municipal corporation or county enters into a compensation agreement with the school district for the loss of tax revenue as the result of a property tax exemption for a business that plans to locate in an enterprise zone. This will result in increased revenue for affected JVSDs, the amount of which will depend on the specific compensation agreement.

EMIS

The bill makes two changes in regard to the Education Management Information System (EMIS), the primary system the Ohio Department of Education (ODE) uses for collecting student, staff, course, program, and financial data from Ohio’s public schools. The bill requires ODE to (1) develop a procedure by June 1, 2020, that permits EMIS users to review and provide comment on new or updated EMIS guidelines, and (2) establish EMIS guidelines for career-technical planning districts (CTPDs) and training programs for personnel that administer EMIS. These requirements may increase administrative costs for ODE, although ODE currently provides EMIS guidance and training.

CTPD FTE determination

The bill permits the lead district of a CTPD to enter into an agreement with another district within the CTPD to establish a method to determine the full-time equivalency (FTE) of a student enrolled in both districts for state funding. Currently, the percent of time a student spends in two different districts is determined by the districts and reported to ODE. However, calculation of the FTE for that student is determined not only by this split, but also by other data such as the student's enrollment date and the student's school calendar. It is not clear if this provision of the bill changes that determination. If so, the provision may increase costs for ODE to change current processes in EMIS.

Temporary teaching permits for nonlicensed individuals

Under current law, the State Board of Education must issue temporary teaching permits to individuals who do not have a teaching license or certificate, but who are otherwise qualified, to teach classes for up to 12 hours per week or up to 40 hours per week if teaching in a science, technology, engineering, or mathematics (STEM) school. The State Board sets the qualifications for these permits in rule, though continuing law requires these individuals to possess a baccalaureate, master's, or doctoral degree in, or significant experience related to, the subject the individual is to teach. By rule, the permit is valid for one year in the district or STEM school that engages the individual to teach. The district superintendent or STEM school administrator must request the State Board to issue a temporary teaching permit.

The bill does all of the following with respect to temporary teaching permits: (1) extends the availability of temporary teaching permits for up to 40 hours per week to an individual teaching an industry-recognized credential program offered at a dropout recovery community school, (2) requires an individual teaching a career-technical education (CTE) class under a temporary permit to have significant career-technical experience, and (3) requires temporary teaching permits to be renewable. If the provision increases the number of temporary teaching permits issued, license revenue to the Teacher Licensure and Certification Fund (Fund 4L20) will increase. Any fiscal effect appears minimal. Temporary teaching permits carry a fee of \$40.

Educational Assessment Study Committee

The bill establishes the Educational Assessment Study Committee, comprised of members from both chambers of the General Assembly, to examine federal and state requirements regarding testing, end-of-course examination and assessment score ranges, performance measures used to determine letter grades on the state report card, and potential waivers from federal testing requirements the state may seek. The Committee must issue a report by October 1, 2020. Any administrative costs related to the Study Committee will be minimal.

Model guidance for inventory of industry-recognized credentials

The bill requires the Governor's Office of Workforce Transformation (OWT), ODE, and the Chancellor of Higher Education, in consultation with Ohio career-technical associations and other stakeholders to develop model guidance for maintaining a statewide inventory of industry-recognized credentials by July 1, 2020. The model guidance will address all of the following: (1) methods for state agencies to organize different categories of industry-recognized credentials in a manner that permits students, schools, and institutions of higher education to

understand credentialing options based on an individual student's circumstances, (2) the potential creation of a public, inter-agency database of information on all industry-recognized credentials, (3) methods to streamline the process of adding career-technical programs to approved credentialing lists, and (4) methods to increase transparency in the industry-recognized credential approval process.

Under current law there are two inventories of industry-recognized credentials, one developed by the Superintendent of Public Instruction, OWT, and representatives of business organizations for purposes of the state report card and qualifying for a high school diploma and one created by the Chancellor of Higher Education that is required to contain the credentials offered at state institutions of higher education and Ohio technical centers that align with in-demand jobs in Ohio. Developing the model guidance may increase the administrative costs of OWT, ODE, and the Department of Higher Education.

School financing studies

The bill may increase ODE's administrative costs to conduct studies related to school finance. The bill requires ODE to conduct two evaluations of school finance related to special education and English language learners, which must be completed by December 31, 2021. The bill also makes changes to the content of the study of economically disadvantaged students required in H.B. 166 and delays the date by which it must be completed from December 31, 2020 to December 31, 2021.

Provisions related to community school fiscal officers

Liability for loss of public funds

Under current law, public officials are strictly and individually liable for the loss or misuse of public money under their control, regardless of blame. Like most public officials in Ohio, community school fiscal officers must obtain a bond conditioned on the fiscal officer's faithful performance of all official duties. The bond protects the community school, not the fiscal officer, against a loss in the event of misuse of public money.

The bill provides an exception¹ to the general rule of strict liability for loss of public funds for a fiscal officer of a community school in the performance of official duties generally and to the fiscal officer's reliance on the accuracy of various nonfinancial information or data. Thus, a fiscal officer will not be held liable unless the funds are lost as a result of the fiscal officer's own negligence or other wrongful act. The bill also protects a community school fiscal officer from liability for any losses of public funds specifically stemming from the payment of a teacher who does not have the proper paperwork (for example, a valid educator license) on file unless the payment was due to negligence or a wrongful act.

In general, when an audit determines that public money has been illegally expended, the Auditor of State issues a finding for recovery against the liable public official and the official's bonding company. The public office may then make a claim to the bonding company to

¹ H.B. 491 of the 132nd General Assembly provided the same liability exemptions for school district and educational service center (ESC) treasurers.

recoup the losses. The bonding company will seek reimbursement from the public official for any claims paid out as a result of the official's failure to faithfully perform duties.

The bill's limits on a community school fiscal officer's liability likely prevent the Auditor from issuing a finding for recovery against those individuals when a loss is not due to negligence or a wrongful act. If so, the community school will be unable to recover from the bonding company the amounts improperly paid. The amount of a community school's unrecovered losses will vary depending on the circumstances of each case, but could be more than minimal. Overall, findings for recovery against community school fiscal officers appear to be rare.

Violations of fiscal officer professional duties

The bill also prohibits ODE from considering the loss of public funds not resulting from the fiscal officer's negligence or other wrongful act as a violation of a community school fiscal officer's professional duties, provided that the fiscal officer has performed all official duties required of the fiscal officer with reasonable care.

This provision may marginally reduce the number of professional conduct cases investigated by ODE's Office of Professional Conduct, which administers the educator disciplinary process. The Office's operating expenses are supported by educator license fees deposited into the Teacher Licensure and Certification Fund (Fund 4L20).

School district transfer process

Effective September 1, 2020, the bill repeals a provision permitting electors residing in school district territory located within a township split between two or more school districts to petition for the transfer of territory to an adjacent school district. Any school district board of education that begins the territory transfer process prior to September 1, 2020, may continue the process. This repeal limits the number of school districts that will have the opportunity to gain or lose territory and the potential administrative costs associated with the territory transfer.