

18A:71B-64

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2001 **CHAPTER:** 262
NJSA: 18A:71B-64 (New Jersey Prepaid Higher Education Expense Program)
BILL NO: A1622/2296

SPONSOR(S): O'Toole

DATE INTRODUCED: Pre-filed

COMMITTEE: **ASSEMBLY:** Education; Appropriations

SENATE: Education; Budget

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** March 8, 2000 Re-enacted December 6, 2001

SENATE: June 28, 2000 Re-enacted November 29, 2001

DATE OF APPROVAL: December 12, 2001

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL (Assembly Committee Substitute for A1622/A2296 (3rd reprint) enacted)

A1622/2296

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SPONSORS STATEMENT (A2296): (Begins on page 14 of original bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes 12-7-
2000(Education)

2-5-2001(Approp)

SENATE: Yes 3-15-
2001(Education)

6-14-2001(Budget)

FLOOR AMENDMENT STATEMENTS: No

LEGISLATIVE FISCAL ESTIMATE: Yes

VETO MESSAGE: Yes

S2054

SPONSORS STATEMENT: (Begins on page 34 of original bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** No

2001(Education)

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FLOOR AMENDMENT STATEMENTS: No

LEGISLATIVE FISCAL ESTIMATE: Yes

FINAL VERSION Yes

VETO MESSAGE: Yes

GOVERNOR'S PRESS RELEASE ON SIGNING: No

FOLLOWING WERE PRINTED:

To check for circulating copies, contact New Jersey State Government
Publications at the State Library (609) 633-2111.

REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: Yes

"NJ law allows prepayment of college tuition," 12-12-2001 Philadelphia Inquirer, pB8

"DiFrancesco signs tuition program into law," 12-12-2001 The Times, pA14

"Governor makes tuition program law," 12-12-2001 Atlantic City Press, p.A6

ASSEMBLY, No. 1622

STATE OF NEW JERSEY

209th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2000 SESSION

Sponsored by:

Assemblyman KEVIN J. O'TOOLE

District 21 (Essex and Union)

Assemblyman FRANCIS J. BLEE

District 2 (Atlantic)

Co-Sponsored by:

Assemblyman Garcia

SYNOPSIS

Establishes New Jersey Prepaid Higher Education Expense Program and provides for certain State control of tuition increases.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 12/8/2000)

1 AN ACT establishing a Prepaid Higher Education Expense Program
2 and amending and supplementing Title 18A of the New Jersey
3 Statutes.

4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7

8 1. (New Section) This act shall be known and may be cited as the
9 "New Jersey Prepaid Higher Education Expense Program Act of
10 1996."

11

12 2. (New Section) The Legislature finds and declares: that
13 educational opportunity at the college and university level is a critical
14 State interest which is linked to the needs of the State to ensure a
15 well-educated work force; that educational opportunity is best ensured
16 through the provision of institutions of higher education which are
17 geographically and financially accessible; that it is in the best interests
18 of this State to adopt and foster mechanisms which will encourage its
19 citizens to engage in the timely financial planning which is necessary
20 to guarantee that students will have the financial resources necessary
21 to pursue a higher education given the annually escalating level of
22 resources which such attendance requires; and that one such
23 mechanism which has proven successful in some other states is the
24 establishment of a program through which many of the costs
25 associated with attendance at institutions of higher education may be
26 paid in advance and fixed at a guaranteed level for the duration of
27 undergraduate enrollment.

28

29 3. (New Section) As used in this act:

30 "Advance payment contract" means a contract entered into by the
31 board and a purchaser pursuant to the provisions of this act;

32 "Board" means the Prepaid Higher Education Expense Board
33 established pursuant to section 7 of this act.

34 "Fund" means the Prepaid Higher Education Expense Trust Fund
35 established pursuant to section 5 of this act.

36 "Independent institution of higher education" means those
37 institutions of higher education incorporated and located in this State,
38 which, by virtue of law or character or license, are nonprofit
39 educational institutions empowered to grant academic degrees and
40 which provide a level of education which is equivalent to the education
41 provided by the State's public institutions of higher education as
42 attested by the receipt of and continuation of regional accreditation by
43 the Middle States Association of Colleges and Schools, and which are

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

1 eligible to receive State aid under the provisions of the Constitution of
2 the United States and the Constitution of the State of New Jersey.
3 "Independent institution of higher education" does not include any
4 educational institution dedicated primarily to the preparation or
5 training of ministers, priests, rabbis, or other professional persons in
6 the field of religion.

7 "Purchaser" means a person who makes or is obligated to make
8 payments in accordance with an advance payment contract.

9 "Qualified beneficiary" means:

10 a. a resident of this State at the time a purchaser enters into an
11 advance payment contract on behalf of the resident; or

12 b. a nonresident who is the child of a noncustodial parent who is
13 a resident of the State at the time that the parent enters into an
14 advance payment contract on behalf of the child.

15 "Public institution of higher education" means Rutgers, The State
16 University, the State colleges or universities established pursuant to
17 chapter 64 of Title 18A of the New Jersey Statutes, the New Jersey
18 Institute of Technology, the University of Medicine and Dentistry of
19 New Jersey, the county colleges and any other public university or
20 college now or hereafter established or authorized by State law.

21 "Program" means the New Jersey Prepaid Higher Education
22 Expense Program established pursuant to section 4 of this act.

23 "Registration fees" means any fees imposed by an institution of
24 higher education, in addition to tuition, required for matriculation at
25 the institution.

26

27 4. (New Section) There is established the New Jersey Prepaid
28 Higher Education Expense Program to provide a mechanism through
29 which the cost of tuition, registration fees, and dormitory residence
30 may be paid in advance of enrollment in a public institution of higher
31 education at a rate lower than the projected corresponding cost at the
32 time of actual enrollment. Under the program, moneys remitted in
33 accordance with advance payment contracts shall be combined and
34 invested in a manner that yields, at a minimum, sufficient interest to
35 generate the difference between the prepaid amount and the cost of
36 tuition, registration fees, and dormitory residence at the time of actual
37 enrollment. A student who enrolls in a public institution of higher
38 education pursuant to this act shall not be charged any fees in excess
39 of the terms set forth in the advance payment contract.

40

41 5. (New Section) There is created within the Department of the
42 Treasury the Prepaid Higher Education Expense Trust Fund. The fund
43 shall consist of State appropriations, moneys acquired from other
44 governmental or private sources, and moneys remitted in accordance
45 with advance payment contracts. Dividends, interest, and gains
46 accruing to the fund shall increase the total funds available for the

1 program. Any funds associated with contracts terminated pursuant to
2 section 15 of this act or with canceled contracts for which refunds
3 have not been claimed shall increase the total funds available for the
4 program. However, the board shall establish procedures for notifying
5 purchasers who cancel a contract of any unclaimed refund and shall
6 establish a time period after which a refund may not be claimed.

7 Any balance contained in the fund at the end of a fiscal year shall
8 remain therein and shall be available for carrying out the purposes of
9 the program.

10
11 6. (New Section) The assets of the fund shall be maintained,
12 invested, and expended solely for the purposes of this act and shall not
13 be loaned, transferred, or otherwise used by the State for any purpose
14 other than the purposes of this act. This section shall not be construed
15 to prohibit the board from investing in, by purchase or otherwise,
16 bonds, notes, or other obligations of the State or an agency or
17 instrumentality of the State. Unless otherwise specified by the board,
18 assets of the fund shall be expended in the following order of priority:

19 a. to make payments to institutions of higher education on behalf
20 of qualified beneficiaries;

21 b. to make refunds upon cancellation of advance payment
22 contracts; and

23 c. to pay the costs of program administration and operations.

24
25 7. a. (New Section) The program shall be administered by the
26 Prepaid Higher Education Expense Board. The board is established
27 as a body corporate and politic in the Executive Branch of State
28 Government and for the purposes of complying with the provisions of
29 Article V, Section IV, paragraph 1 of the New Jersey Constitution, the
30 board is allocated in but not of the Department of the Treasury, but
31 notwithstanding this allocation, the board shall be independent of any
32 supervision or control by the department or by any board or officer
33 thereof.

34 b. The board shall consist of seven members including the State
35 Treasurer, the chairman of the Commission on Higher Education, and
36 five members appointed by the Governor with the advice and consent
37 of the Senate without regard for political affiliation. Each member
38 appointed by the Governor shall possess knowledge, skill, and
39 experience in the areas of accounting, actuary, risk management, or
40 investment management. The State Treasurer and the Chairman of the
41 Commission on Higher Education may each appoint a designee to sit
42 on the board; however, any designee named shall meet the
43 qualifications required of gubernatorial appointees to the board.
44 Members appointed by the Governor shall serve terms of three years
45 except that in making the initial appointments, the Governor shall
46 appoint one member to serve for one year, two members to serve for

1 two years, and two members to serve for three years. Any member
2 appointed to fill a vacancy on the board shall be appointed in a like
3 manner and shall serve until a successor qualifies. Members of the
4 board shall serve without compensation but shall be reimbursed for any
5 necessary expenses incurred in the performance of their duties.

6
7 8. (New Section) The Governor shall appoint a member of the
8 board to serve as the initial chair of the board. Thereafter, the board
9 shall elect a chair annually. The board shall annually elect a board
10 member to serve as vice-chair and shall designate a secretary-treasurer
11 who need not be a member of the board. The secretary-treasurer shall
12 keep a record of the proceedings of the board and shall be the
13 custodian of all printed material filed with or by the board and of its
14 official seal. Notwithstanding the existence of vacancies on the board,
15 a majority of the members shall constitute a quorum. The board shall
16 take no official action in the absence of a quorum. The board shall
17 meet, at a minimum, on a quarterly basis at the call of the chair.

18
19 9. (New Section) The board shall have the powers necessary or
20 proper to carry out the provisions of this act, including, but not limited
21 to, the power to:

- 22 a. appoint an executive director to serve as the chief administrative
23 and operational officer of the board and to perform other duties
24 assigned by the board;
- 25 b. adopt an official seal and rules;
- 26 c. sue and be sued;
- 27 d. make and execute contracts and other necessary instruments;
- 28 e. establish agreements or other transactions with federal, State,
29 and local agencies, including public institutions of higher education;
- 30 f. invest funds not required for immediate disbursement;
- 31 g. appear in its own behalf before boards, commissions, or other
32 governmental agencies;
- 33 h. hold, buy, and sell any instruments, obligations, securities, and
34 property determined appropriate by the board;
- 35 i. require a reasonable length of State residence for qualified
36 beneficiaries;
- 37 j. restrict the number of participants in the county college plan,
38 university plan, and dormitory residence plan, as those plans are
39 defined in section 18 of this act. A person denied participation solely
40 on the basis of this restriction shall be granted priority for
41 participation during the succeeding year;
- 42 k. segregate contributions and payments to the fund into various
43 accounts;
- 44 l. contract for necessary goods and services, employ necessary
45 personnel, and engage the services of private consultants, actuaries,
46 managers, legal counsel, and auditors for administrative or technical

1 assistance;

2 m. solicit and accept gifts, grants, loans, and other aids from any
3 source or participate in any other way in any government program to
4 carry out the purposes of this act;

5 n. require and collect administrative fees and charges in connection
6 with any transaction and impose reasonable penalties, including
7 default, for delinquent payments or for entering into an advance
8 payment contract on a fraudulent basis;

9 o. procure insurance against any loss in connection with the
10 property, assets, and activities of the fund or the board;

11 p. impose reasonable time limits on use of the tuition benefits
12 provided by the program. This limitation shall be specified within the
13 advance payment contract;

14 q. delineate the terms and conditions under which payments may
15 be withdrawn from the fund and impose reasonable fees and charges
16 for withdrawals. The terms and conditions shall be specified within
17 the advance payment contract;

18 r. provide for the receipt of contributions in lump sums or
19 installment payments;

20 s. establish other policies, procedures, and criteria to implement
21 and administer the provisions of this act; and

22 t. require that purchasers of advance payment contracts verify,
23 under oath, any requests for contract conversions, substitutions,
24 transfers, cancellations, refund requests, or contract changes of any
25 nature.

26

27 10. (New Section) The board shall administer the fund in a manner
28 that is sufficiently actuarially sound to defray the obligations of the
29 program. The board shall annually evaluate or cause to be evaluated
30 the actuarial soundness of the fund. If the board determines a need for
31 additional assets in order to preserve actuarial soundness, the board
32 may adjust the terms of subsequent advance payment contracts to
33 ensure soundness.

34

35 11. (New Section) a. The board, acting with the approval of the
36 State Treasurer, shall establish a comprehensive investment plan for
37 the purposes of this act. The comprehensive investment plan shall
38 specify the investment policies to be utilized by the board in its
39 administration of the fund. The board may place assets of the fund in
40 savings accounts or use the funds to purchase fixed or variable life
41 insurance or annuity contracts, securities, evidence of indebtedness, or
42 other investment products, pursuant to the comprehensive investment
43 plan and in such proportions as may be designated or approved under
44 that plan. The insurance, annuity, savings, or investment products
45 shall be underwritten and offered in compliance with the applicable
46 federal and State laws and regulations and by persons who are duly

1 authorized by applicable federal and State authorities. Within the
2 comprehensive investment plan, the board may authorize investment
3 vehicles, or products incident thereto, as may be available or offered
4 by qualified companies or persons.

5 b. The board may delegate responsibility for administration of the
6 comprehensive investment plan required pursuant to subsection a. of
7 this section to a person the board determines to be qualified. The
8 person shall be compensated by the board. Directly or through that
9 person, the board may contract with a private corporation or
10 institution to provide such services as may be a part of the
11 comprehensive investment plan or as may be deemed necessary or
12 proper by the board or designated person, including, but not limited
13 to, providing consolidated billing, individual and collective record
14 keeping and accounting, and asset purchase, control, and safekeeping.

15 c. The board shall annually prepare or cause to be prepared a
16 report setting forth in appropriate detail an accounting of the fund and
17 a description of the financial condition of the program at the close of
18 each fiscal year. The report shall be submitted to the Governor, the
19 President of the Senate, the Speaker of the General Assembly, the
20 State Treasurer and members of the Commission on Higher Education
21 on or before August 1 each year. In addition, the board shall make the
22 report available to purchasers of advance payment contracts. The
23 board shall provide to the Commission on Higher Education by
24 August 1 each year complete advance payment contract sales
25 information including projected higher education enrollments of
26 qualified beneficiaries. The accounts of the funds shall be subject to
27 annual audits by the State Auditor or his designee.

28 d. The board shall solicit answers to applicable ruling requests
29 from the federal Internal Revenue Service regarding the tax status of
30 fees paid pursuant to an advance payment contract to the purchaser or
31 qualified beneficiary and from the Securities and Exchange
32 Commission regarding the application of federal securities laws to the
33 fund. The board shall make the status of the requests known before
34 entering into an advance payment contract.

35 e. The board shall solicit proposals for the marketing of the
36 program. The entity designated pursuant to this subsection shall serve
37 as a centralized marketing agent for the program and shall be solely
38 responsible for the marketing of the program. Materials produced for
39 the purpose of marketing the program shall be submitted to the board
40 for review and approval. Marketing materials shall not be made
41 available or distributed to the public prior to the materials being
42 approved by the board. An institution of higher education may
43 distribute marketing materials produced for the program. The State
44 and the board shall not be liable for misrepresentation of the program
45 by a marketing agent.

46 f. The board may make available insurance coverage written

1 exclusively for the purpose of protecting advance payment contracts,
2 and the purchasers or beneficiaries thereof, which may be issued in the
3 form of a group term life policy to purchasers of advance payment
4 contracts.

5
6 12. (New Section) The board shall develop advance payment
7 contracts for tuition and registration fees and advance payment
8 contracts for dormitory residence. Advance payment contracts shall
9 be exempt from the provisions of Subtitle 3 of Title 17 of the Revised
10 Statutes and Subtitle 3 of Title 17B of the New Jersey Statutes. The
11 board may request assistance from the Office of the Attorney General
12 in the development of the advance payment contracts. The contents
13 of both types of contracts shall include, but not be limited to, the
14 following:

- 15 a. the amount of the payments and the number of payments
16 required from a purchaser;
17 b. the terms and conditions under which purchasers are required
18 to remit payments, including, but not limited to, the date or dates upon
19 which each payment is due;
20 c. provisions for late payment charges and for default;
21 d. provisions for penalty fees for withdrawals from the fund;
22 e. the name and date of birth of the qualified beneficiary on whose
23 behalf the contract is drawn and the terms and conditions under which
24 another person may be substituted as the qualified beneficiary;
25 f. the name of any person who may cancel the contract. The terms
26 of the contract shall specify whether the contract may be canceled by
27 the purchaser, the qualified beneficiary, a specific designated person,
28 or any combination of these persons;
29 g. the terms and conditions under which a contract may be
30 canceled, the name of the person entitled to any refund due as a result
31 of the cancellation, and the amount of refund, if any, due to the
32 person named;
33 h. the time limitations, if any, within which the qualified beneficiary
34 is required to claim benefits through the program; and
35 i. other terms and conditions deemed by the board to be necessary
36 or proper.

37
38 13. (New Section) In addition to the provisions of section 12 of
39 this act, an advance payment contract for tuition and registration fees
40 shall include, but not be limited to, the following:

- 41 a. the number of semester credit hours contracted by the purchaser;
42 b. whether the contracted credit hours are to be applied toward a
43 four-year public institution of higher education or a county college;
44 c. the assumption of a contractual obligation by the board to the
45 qualified beneficiary to provide for a specified number of semester
46 credit hours of undergraduate instruction at a public institution of

1 higher education, not to exceed the average number of credit hours
2 required for the conference of the degree that corresponds to the plan
3 purchased on behalf of the qualified beneficiary.

4
5 14. (New Section) In addition to the provisions of section 12 of
6 this act, an advance payment contract for dormitory residence shall
7 include, but not be limited to, the following:

8 a. the number of semesters of dormitory residence contracted by
9 the purchaser; and

10 b. the assumption of a contractual obligation by the board to the
11 qualified beneficiary to provide for a specified number of semesters of
12 dormitory residence at a public institution of higher education, not to
13 exceed the maximum number of semesters of full-time enrollment
14 required for the conference of a baccalaureate degree.

15
16 15. (New Section) An advance payment contract may provide that
17 a contract which has not been canceled and under which benefits have
18 not been exercised within a specified period of time, shall be
19 considered terminated. Time expended by a qualified beneficiary as an
20 active duty member of any of the armed services of the United States
21 shall be added to the period of time permitted to exercise the benefits
22 under the advance payment contract. A purchaser or qualified
23 beneficiary whose advance payment contract is terminated pursuant to
24 this section shall not be entitled to a refund. The board shall retain any
25 moneys paid by the purchaser for an advance payment contract that
26 has been terminated in accordance with this section. The moneys
27 retained by the board shall be used by the board to further the
28 purposes of this act.

29
30 16. (New Section) A refund provided pursuant to of subsection g.
31 of section 12 of this act, shall not exceed the amount paid into the
32 fund by the purchaser, except as provided in this section. Refunds
33 may exceed the amount paid into the fund in the following
34 circumstances:

35 a. if the qualified beneficiary is awarded a scholarship, the terms of
36 which cover the benefits included in the advance payment contracts,
37 moneys paid for the purchase of the advance payment contracts shall
38 be returned to the purchaser in semester installments coinciding with
39 the matriculation by the qualified beneficiary in amounts of either the
40 original purchase price plus 5% compounded interest, or the current
41 rates at public institutions of higher education, whichever is less;

42 b. in the event of the death or total disability of the qualified
43 beneficiary, moneys paid for the purchase of advance payment
44 contracts shall be returned to the purchaser together with 5%
45 compounded interest, or the current rates at public institutions of
46 higher education, whichever is less; and

1 c. if an advance payment contract is converted from a university
2 plan to a county college plan, the amount refunded shall be the value
3 of the original advance payment contract minus the value of the
4 contract after the conversion.

5
6 17. (New Section) A refund shall not be authorized through an
7 advance payment contract for any school year partially attended but
8 not completed. For purposes of this section, a school year partially
9 attended but not completed means any one semester whereby the
10 student is still enrolled at the conclusion of the official drop-add
11 period, but withdraws before the end of the semester. If a qualified
12 beneficiary does not complete a county college plan or university plan,
13 as those terms are defined pursuant to section 18 of this act, for
14 reasons other than specified in section 16 of this act, the purchaser
15 shall receive a refund of the amount paid into the fund for the
16 remaining unattended years of the advance payment contract pursuant
17 to rules promulgated by the board.

18
19 18. (New Section) At a minimum, the board shall make advance
20 payment contracts available for three independent plans to be known
21 as the county college plan, the university plan, and the dormitory
22 residence plan.

23 a. Through the county college plan, the advance payment contract
24 shall provide prepaid tuition and registration fees for a specified
25 number of undergraduate semester credit hours not to exceed the
26 average number of hours required for the conference of an associate
27 degree. The cost of participation in the county college plan shall be
28 based primarily on the average current and projected tuition and
29 registration fees within the county college system and the number of
30 years expected to elapse between the purchase of the plan on behalf of
31 a qualified beneficiary and the exercise of the benefits provided in the
32 plan by the qualified beneficiary. Qualified beneficiaries shall bear the
33 cost of any laboratory fees associated with enrollment in specific
34 courses. Each qualified beneficiary shall be classified as a resident for
35 tuition purposes regardless of his actual legal residence.

36 b. Through the university plan, the advance payment contract shall
37 provide prepaid tuition and registration fees for a specified number of
38 undergraduate semester credit hours not to exceed the average
39 number of hours required for the conference of a baccalaureate
40 degree. The cost of participation in the university plan shall be based
41 primarily on the current and projected tuition and registration fees of
42 the four-year public institutions of higher education and the number
43 of years expected to elapse between the purchase of the plan on
44 behalf of a qualified beneficiary and the exercise of the benefits
45 provided in the plan by the beneficiary. Qualified beneficiaries shall
46 bear the cost of any laboratory fees associated with enrollment in

1 specific courses. In the event that a qualified beneficiary fails to be
2 admitted to a four-year public institution of higher education or
3 chooses to attend a county college, the qualified beneficiary may
4 convert the average number of semester credit hours required for the
5 conference of an associate degree from a university plan to a county
6 college plan and may retain the remaining semester credit hours in the
7 university plan or may request a refund for prepaid credit hours in
8 excess of the average number of semester credit hours required for the
9 conference of an associate degree pursuant to section 16 of this act.
10 Each qualified beneficiary shall be classified as a resident for tuition
11 purposes regardless of his actual legal residence.

12 c. Through the dormitory residence plan, the advance payment
13 contract shall provide prepaid housing fees for a maximum of 10
14 semesters of full-time undergraduate enrollment in a four-year public
15 institution of higher education. Dormitory residence plans are optional
16 and may be purchased only in conjunction with a university plan.
17 Dormitory residence plans shall be purchased in increments of two
18 semesters. The cost of participation in the dormitory residence plan
19 shall be based primarily on the average current and projected housing
20 fees of four-year public institutions of higher education and the
21 number of years expected to elapse between the purchase of the plan
22 on behalf of a qualified beneficiary and the exercise of the benefits
23 provided in the plan by the qualified beneficiary. Qualified
24 beneficiaries shall bear the cost of any additional elective charges such
25 as laundry service or long-distance telephone service. Each four-year
26 public institution of higher education may specify the residence halls
27 eligible for inclusion in the plan. In addition, a four-year public
28 institution of higher education may request immediate termination of
29 a dormitory residence contract based on a violation or multiple
30 violations of rules of the residence hall. Qualified beneficiaries shall
31 have the highest priority in the assignment of housing within residence
32 halls. In the event that sufficient housing is not available for all
33 qualified beneficiaries, the board shall refund the purchaser or qualified
34 beneficiary an amount equal to the fees charged for dormitory
35 residence during that semester.

36 d. In addition to the plans required pursuant to this section, the
37 board may make advance payments contracts available for other plans,
38 such as the community college plus university plan whereby the
39 advance payment contract would provide tuition and registration fees
40 that would allow a qualified beneficiary to attend a community college
41 for an associate degree and then attend a four-year public institution
42 of higher education for a baccalaureate degree.

43 e. A qualified beneficiary may apply a county college plan,
44 university plan, or dormitory residence plan toward any eligible
45 independent institution of higher education. The board shall transfer
46 or cause to have transferred to the eligible independent institution of

1 higher education designated by the qualified beneficiary an amount not
2 to exceed the redemption value of the advance payment contract
3 within a public institution of higher education. In the event that the
4 cost of tuition and registration fees or housing fees at the
5 independent institution of higher education are less than the
6 corresponding fees at a public institution of higher education, the
7 amount transferred shall not exceed the actual cost of tuition and
8 registration fees or housing fees. A transfer authorized pursuant to
9 this subsection shall not exceed the number of semester credit hours
10 or semesters of dormitory residence contracted on behalf of a
11 qualified beneficiary.

12 f. A qualified beneficiary may apply the benefits of an advance
13 payment contract toward an eligible out-of-state public college or
14 university. An out-of-state public college or university which is not
15 for profit, is accredited by a regional accrediting association, and
16 which confers baccalaureate degrees shall be eligible for such
17 application. The board shall transfer, or cause to have transferred, an
18 amount not to exceed the redemption value of the advance payment
19 contract or the original purchase price plus 5% compounded interest,
20 whichever is less, after assessment of a reasonable transfer fee. In the
21 event that the cost of registration or housing fees charged the qualified
22 beneficiary at the eligible out-of-state college or university is less than
23 this calculated amount, the amount transferred shall not exceed the
24 actual cost of tuition and registration fees or housing fees. Any
25 remaining amount shall be transferred in subsequent semesters until
26 the transfer value is depleted. A transfer authorized pursuant to this
27 subsection shall not exceed the number of semester credit hours or
28 semesters of dormitory residence contracted on behalf of a qualified
29 beneficiary.

30

31 19. (New Section) The board shall solicit proposals for the
32 operation of the program through which the board shall contract for
33 the services of a records administrator, a trustee services firm, and one
34 or more product providers.

35 a. The records administrator shall be the entity designated by the
36 board to conduct the daily operations of the program on behalf of the
37 board. The goals of the board in selecting a records administrator
38 shall be to provide purchasers with the most secure, well-diversified,
39 and beneficially administered higher education expense plan possible,
40 to allow all qualified firms interested in providing the services equal
41 consideration, and to provide the services to the State at no cost and
42 to the purchasers at the lowest cost possible. Evaluations of proposals
43 submitted pursuant to this subsection shall include, but not be limited
44 to, the following criteria:

45 (1) fees and other costs charged to purchasers that affect account
46 values or operational costs related to the program;

1 (2) past experience in records administration and current ability to
2 provide timely and accurate service in the areas of records
3 administration, audit and reconciliation, plan communication,
4 participant service, and complaint resolution;

5 (3) sufficient staff and computer capability for the scope and level
6 of service expected by the board; and

7 (4) financial history and current financial strength and capital
8 adequacy to provide administrative services required by the board.

9 b. The trustee services firm shall be the entity designated by the
10 board to select and supervise investment programs on behalf of the
11 board. The goals of the board in selecting a trustee services firm shall
12 be to obtain the highest standards of professional trustee services, to
13 allow all qualified firms interested in providing services equal
14 consideration, and to provide services to the State at no cost and to
15 the purchasers at the lowest cost possible. The trustee services firm
16 shall agree to meet the obligations of the board to qualified
17 beneficiaries if moneys in the fund fail to offset the obligations of the
18 board as a result of imprudent selection or supervision of investment
19 programs by the firm. Evaluations of proposals submitted pursuant
20 to this subsection shall include, but not be limited to the following
21 criteria:

22 (1) adequacy of trustee services for supervision and management
23 of the program, including current operations and staff organization and
24 commitment of management to the proposal;

25 (2) capability to execute program responsibilities within time and
26 regulatory constraints;

27 (3) past experience in trustee services and current ability to
28 maintain regular and continuous interactions with the board, records
29 administrator, and product provider;

30 (4) the minimum purchaser participation assumed within the
31 proposal and any additional requirements of purchasers;

32 (5) adequacy of technical assistance and services proposed for
33 staff;

34 (6) adequacy of a management system for evaluating and
35 improving overall trustee services to the program;

36 (7) adequacy of facilities, equipment, and electronic data
37 processing services; and

38 (8) detailed projections of administrative costs, including the
39 amount and type of insurance coverage, and detailed projections of
40 total costs.

41
42 20. (New Section) Moneys paid into or out of the fund by or on
43 behalf of a purchaser or qualified beneficiary of an advance payment
44 contract made under this act, which contract has not been terminated
45 or canceled, are exempt for all claims of creditors of the purchaser or
46 the beneficiary.

1 21. (New Section) The State or any State agency, county,
2 municipality, or other political subdivision may, by contract or
3 collective bargaining agreement, agree with any employee to remit
4 payments toward advance payment contracts through payroll
5 deductions made by the appropriate officer or officers of the State,
6 State agency, county, municipality, or political subdivision. The
7 payments shall be held and administered in accordance with this act.
8

9 22. (New Section) Nothing in this act shall be construed as a
10 promise or guarantee that a qualified beneficiary shall be admitted to
11 a public institution of higher education or to a particular public
12 institution of higher education, shall be allowed to continue
13 enrollment at a public institution of higher education after admission,
14 or shall be graduated from a public institution of higher education.
15

16 23. (New Section) The State shall agree to meet the obligations
17 of the board to qualified beneficiaries, if moneys in the fund fail to
18 offset the obligations of the board. The Legislature shall appropriate
19 to the Prepaid Higher Education Expense Trust Fund the amount
20 necessary to meet the obligations of the board to qualified
21 beneficiaries.
22

23 24. (New Section) In the event that the State Treasurer determines
24 the program to be financially infeasible, the State may discontinue the
25 provision of the program. A qualified beneficiary who has been
26 accepted by and is enrolled or is within five years of enrollment in an
27 independent institution of higher education or public institution of
28 higher education shall be entitled to exercise the benefits for which he
29 has contracted. All other contract holders shall receive a refund of the
30 amount paid into the fund, plus interest at the prevailing rate.
31

32 25. Section 6 of P.L.1994, c.48 (C.18A:3B-6) is amended to read
33 as follows:

34 6. The governing board of each public institution of higher
35 education shall have the following general powers and duties to fulfill
36 its mission and the Statewide goals in cooperation with other
37 institutions and the State coordinating structures:

38 a. To develop an institutional plan and to determine the programs
39 and degree levels to be offered by the institution consistent with this
40 plan and the institution's programmatic mission;

41 b. To have authority over all matters concerning the supervision
42 and operations of the institution including fiscal affairs, the
43 employment and compensation of staff not classified under Title 11A
44 of the New Jersey Statutes, and capital improvements in accordance
45 with law;

46 c. To set tuition and fees; however, prior to the date of the

1 adoption of a tuition or fee schedule or an overall institutional budget,
2 and with reasonable notice thereof, the governing board shall conduct
3 a public hearing at such times and places as will provide those
4 members of the college community who wish to testify with an
5 opportunity to be heard. The tuition and fees shall be set according to
6 guidelines promulgated by the New Jersey Commission on Higher
7 Education to accommodate the provisions of the New Jersey Prepaid
8 Higher Education Expense Program established pursuant to section 4
9 of P.L., c. (C.)(now pending before the Legislature as this bill);

10 d. To establish admission standards and requirements and standards
11 for granting diplomas, certificates and degrees;

12 e. To recommend for appointment by the Governor, members to
13 the institution's governing board. The recommendation shall be made
14 with regard to the mission of the institution and the diversity of the
15 community to be served;

16 f. To have final authority to determine controversies and disputes
17 concerning tenure, personnel matters of employees not classified under
18 Title 11A of the New Jersey Statutes, and other issues arising under
19 Title 18A of the New Jersey Statutes involving higher education
20 except as otherwise provided herein. Any hearings conducted pursuant
21 to this section shall conform to the requirements of the
22 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
23 seq.). The final administrative decision of a governing board of a
24 public institution of higher education is appealable to the Superior
25 Court, Appellate Division;

26 g. To invest and reinvest the funds of the institution; however,
27 institutions which invest the funds of the institution through the
28 Director of the Division of Investment in the Department of the
29 Treasury on or before the effective date of this act shall continue to do
30 so, unless this requirement is waived by the State Treasurer on an
31 annual basis, which waiver shall not be unreasonably withheld;

32 h. To retain legal counsel of the institution's choosing. State
33 entities may choose representation by the Attorney General; however,
34 as to claims of a tortious nature, the institution shall elect within
35 75 days of the effective date of this act whether it, and its employees,
36 shall be represented in all such matters by the Attorney General. If the
37 institution elects not to be represented by the Attorney General, it shall
38 be considered and its employees considered employees of a sue and be
39 sued entity for the purposes of the "New Jersey Tort Claims Act" only.
40 The institution shall be required in that circumstance to provide its
41 employees with defense and indemnification consistent with the terms
42 and conditions of the Tort Claims Act in lieu of the defense and
43 indemnification that such employees would otherwise seek and be
44 entitled to from the Attorney General pursuant to N.J.S.59:10-1 et
45 seq. and P.L.1972, c.48 (C.59:10A-1 et seq.);

46 i. To be accountable to the public for fulfillment of the institution's

1 mission and Statewide goals and for effective management of the
2 institution;

3 j. To submit a request for State support to the Division of Budget
4 and Accounting in the Department of the Treasury and to the
5 commission in accordance with the provisions of this act;

6 k. To have prepared and made available to the public an annual
7 financial statement, and a statement setting forth generally the moneys
8 expended for government relations, public relations and legal costs;

9 l. To have prepared an annual independent financial audit, which
10 audit and any management letters regarding that audit shall be deemed
11 public documents.

12 These powers and duties are in addition to and not a limitation of
13 the specific powers and duties provided for the governing board of
14 each public institution under chapters 64, 64A, 64G or 64E of Title
15 18A of the New Jersey Statutes. If the provisions of this section are
16 inconsistent with these specific powers and duties, the specific powers
17 and duties shall govern.

18 (cf: P.L.1994, c.48, s.6)

19

20 26. Section 14 of P.L.1994, c.48 (C.18A:3B-14) is amended to
21 read as follows:

22 14. The commission shall be responsible for:

23 a. Statewide planning for higher education including research on
24 higher education issues and the development of a comprehensive
25 master plan, including, but not limited to, the establishment of new
26 institutions, closure of existing institutions, and consolidation of
27 institutions, which plan shall be long-range in nature and regularly
28 revised and updated. The council may request the commission to
29 conduct a study of a particular issue. The commission may require
30 from institutions of higher education such reports or other information
31 as may be necessary to enable the commission to perform its duties;

32 b. advocacy on behalf of higher education including informing the
33 public of the needs and accomplishments of higher education in New
34 Jersey;

35 c. making recommendations to the Governor and Legislature on
36 higher education initiatives and incentive programs of Statewide
37 significance;

38 d. final administrative decisions over institutional licensure and
39 university status giving due consideration to the accreditation status
40 of the institution. The commission shall furnish the Presidents' Council
41 with any pertinent information compiled on behalf of the subject
42 institution and the council shall then make recommendations to the
43 commission concerning the licensure of the institution or university
44 status within sixty days of receipt of the information;

45 e. adopting a code of ethics applicable to institutions of higher
46 education;

- 1 f. final administrative decisions over new academic programs that
2 go beyond the programmatic mission of the institution and final
3 administrative decisions over a change in the programmatic mission of
4 an institution;
- 5 g. reviewing requests for State support from the institutions in
6 relation to the mission of the institution and Statewide goals and
7 proposing a coordinated budget policy statement to the Governor and
8 Legislature;
- 9 h. communicating with the State Board of Education and
10 Commissioner of Education to advance public education at all levels
11 including articulation between the public schools and higher education
12 community;
- 13 i. applying for and accepting grants from the federal government,
14 or any agency thereof, or grants, gifts or other contributions from any
15 foundation, corporation, association or individual, and complying with
16 the terms, conditions and limitations thereof, for the purpose of
17 advancing higher education. Any money so received may be expended
18 by the commission upon warrant of the director of the Office of
19 Management and Budget in the Department of the Treasury on
20 vouchers certified by the executive director of the commission;
- 21 j. acting as the lead agency of communication with the federal
22 government concerning higher education issues;
- 23 k. exercising all of the powers and duties previously exercised by
24 the Board of Higher Education, the Department of Higher Education,
25 and the Chancellor of Higher Education, under the "New Jersey
26 Higher Education Building Construction Bond Act of 1971,"
27 P.L.1971, c.164, the "New Jersey Medical Education Facilities Bond
28 Act of 1977," P.L.1977, c.235, the "Jobs, Science and Technology
29 Bond Act of 1984," P.L.1984, c.99 and the "Jobs, Education and
30 Competitiveness Bond Act of 1988," P.L.1988, c.78, the "Higher
31 Education Equipment Leasing Fund Act," P.L.1993, c.136, the
32 "Higher Education Facilities Trust Fund Act," P.L.1993, c.375 and the
33 "N.J.CLASS Loan Program," P.L.1991, c.268; [and]
- 34 l. exercising any other power or responsibility necessary in order
35 to carry out the provisions of this act; and
- 36 m. preparing guidelines for the use of governing boards of public
37 institutions of higher education in setting tuition and fees, in order to
38 accommodate the provisions of the New Jersey Prepaid Higher
39 Education Expense Program established pursuant to section 4 of
40 P.L. , c. (C.)(now pending before the Legislature as this bill).
41 (cf: P.L.1994, c.48, s.14)

42

43 27. N.J.S.18A:64-6 is amended to read as follows:

44 18A:64-6. The board of trustees of a State college shall have
45 general supervision over and shall be vested with the conduct of the
46 college. It shall have the power and duty to:

- 1 a. Adopt and use a corporate seal;
- 2 b. Determine the educational curriculum and program of the
3 college consistent with the programmatic mission of the institution or
4 approved by the Commission on Higher Education;
- 5 c. Determine policies for the organization, administration and
6 development of the college;
- 7 d. Study the educational and financial needs of the college;
8 annually acquaint the Governor and Legislature with the condition of
9 the college; and prepare and present the annual budget to the
10 Governor, the Division of Budget and Accounting in the Department
11 of the Treasury and the Legislature in accordance with law;
- 12 e. Disburse all moneys appropriated to the college by the
13 Legislature and all moneys received from tuition, fees, auxiliary
14 services and other sources;
- 15 f. Direct and control expenditures and transfers of funds
16 appropriated to the college and tuition received by the college, in
17 accordance with the provisions of the State budget and appropriation
18 acts of the Legislature, reporting changes and additions thereto and
19 transfers thereof to the Director of the Division of Budget and
20 Accounting in the State Department of the Treasury and as to funds
21 received from other sources, direct and control expenditures and
22 transfers in accordance with the terms of any applicable trusts, gifts,
23 bequests, or other special provisions. All accounts of the college shall
24 be subject to audit by the State at any time;
- 25 g. In accordance with the provisions of the State budget and
26 appropriation acts of the Legislature, appoint and fix the compensation
27 of a president of the college, who shall be the executive officer of the
28 college and an ex officio member of the board of trustees, without
29 vote, and shall serve at the pleasure of the board of trustees;
- 30 h. Notwithstanding the provisions of Title 11, Civil Service, of the
31 Revised Statutes, upon nomination by the president appoint a treasurer
32 and such deans and other professional members of the academic,
33 administrative and teaching staffs as defined in section 13 of P.L.1986,
34 c.42 (C.18A:64-21.2) as shall be required and fix their compensation
35 and terms of employment in accordance with salary ranges and policies
36 which shall prescribe qualifications for various classifications and shall
37 limit the percentage of the educational staff that may be in any given
38 classification;
- 39 i. Upon nomination by the president, appoint, remove, promote and
40 transfer such other officers, agents or employees as may be required
41 for carrying out the purposes of the college and assign their duties,
42 determine their salaries and prescribe qualifications for all positions,
43 all in accordance with the provisions of Title 11, Civil Service, of the
44 Revised Statutes;
- 45 j. Grant diplomas, certificates and degrees;
- 46 k. Pursuant to the provisions of the "State College Contracts Law,"

1 P.L.1986, c.43 (C.18A:64-52 et seq.) enter into contracts and
2 agreements for the purchase of lands, buildings, equipment, materials,
3 supplies and services; enter into contracts and agreements with the
4 State or any of its political subdivisions or with the United States, or
5 with any public body, department or other agency of the State or the
6 United States or with any individual, firm, or corporation, which are
7 deemed necessary or advisable by the board for carrying out the
8 purposes of the college;

9 l. If necessary, take and condemn land and other property in the
10 manner provided by the "Eminent Domain Act of 1971," P.L.1971,
11 c.361 (C.20:3-1 et seq.), whenever authorized by law to purchase land
12 or other property;

13 m. Adopt, after consultation with the president and faculty, bylaws
14 and make and promulgate such rules, regulations and orders, not
15 inconsistent with the provisions of this article, that are necessary and
16 proper for the administration and operation of the college and the
17 carrying out of its purposes;

18 n. Establish fees for room and board sufficient for the operation,
19 maintenance, and rental of student housing and food service facilities;

20 o. Fix and determine tuition rates and other fees to be paid by
21 students. The tuition and fees shall be set according to guidelines
22 promulgated by the New Jersey Commission on Higher Education to
23 accommodate the provisions of the New Jersey Prepaid Higher
24 Education Expense Program established pursuant to section 4 of
25 P.L. , c. (C.)(now pending before the Legislature as this bill);

26 p. Accept from any government or governmental department,
27 agency or other public or private body or from any other source grants
28 or contributions of money or property, which the board may use for or
29 in aid of any of its purposes;

30 q. Acquire by gift, purchase, condemnation or otherwise, own,
31 lease, dispose of, use and operate property, whether real, personal or
32 mixed, or any interest therein, which is necessary or desirable for
33 college purposes;

34 r. Employ architects to plan buildings; secure bids for the
35 construction of buildings and for the equipment thereof; make
36 contracts for the construction of buildings and for equipment; and
37 supervise the construction of buildings;

38 s. Manage and maintain, and provide for the payment of all charges
39 and expenses in respect to all properties utilized by the college;

40 t. Borrow money for the needs of the college, as deemed requisite
41 by the board, in such amounts, and for such time and upon such terms
42 as may be determined by the board, provided that this borrowing shall
43 not be deemed or construed to create or constitute a debt, liability, or
44 a loan or pledge of the credit, or be payable out of property or funds,
45 other than moneys appropriated for that purpose, of the State;

46 u. Authorize any new program, educational department or school

1 consistent with the institution's programmatic mission or approved by
2 the commission;

3 v. (Deleted by amendment, P.L.1994, c.48); and

4 w. Pursuant to the "State College Contracts Law," P.L.1986, c.43
5 (C.18A:64-52 et seq.), award contracts and agreements for the
6 performance of any construction work or the furnishing of any
7 materials or supplies to the lowest responsible bidder whose bid,
8 conforming to the invitation for bids, will be most advantageous to the
9 State colleges.

10 (cf: P.L.1994, c.48, s.96)

11

12 28. N.J.S.18A:64-13 is amended to read as follows:

13 18A:64-13. Students in each State college who are residents of
14 New Jersey shall be required to pay each year a minimum tuition fee
15 and nonresidents of the State shall pay an additional fee. Such fees
16 and any increase of the minimum tuition fee shall be determined by
17 each college board of trustees, according to guidelines promulgated by
18 the New Jersey Commission on Higher Education to accommodate the
19 provisions of the New Jersey Prepaid Higher Education Expense
20 Program established pursuant to section 4 of P.L. , c. (C.)(now
21 pending before the Legislature as this bill). The board of trustees may
22 waive the payment of the college's anticipated tuition revenues to
23 accomplish mission-related or policy goals.

24 (cf: P.L.1994, c.48, s.99)

25

26 29. N.J.S.18A:64A-12 is amended to read as follows:

27 18A:64A-12. For the effectuation of the purposes of this chapter,
28 the board of trustees of a county college in addition to such other
29 powers expressly granted to it by law, is hereby granted the following
30 powers:

31 a. To adopt or change the name of the county college;

32 b. To adopt and use a corporate seal;

33 c. To sue and be sued;

34 d. To determine the educational curriculum and program of the
35 college consistent with the programmatic mission of the institution or
36 approved by the Commission on Higher Education;

37 e. To appoint and fix the compensation and term of office of a
38 president of the college who shall be the executive officer of the
39 college and an ex officio member of the board of trustees;

40 f. To appoint, upon nomination of the president, members of the
41 administrative and teaching staffs and fix their compensation and terms
42 of employment subject to the provisions of N.J.S.18A:64A-13;

43 g. To appoint or employ such other officers, agents and employees
44 as may be required to carry out the provisions of this chapter and to
45 fix and determine their qualifications, duties, compensation, terms of
46 office and all other conditions and terms of employment and retention;

- 1 h. To fix and determine tuition rates and other fees to be paid by
2 students. The tuition and fees shall be set according to guidelines
3 promulgated by the New Jersey Commission on Higher Education to
4 accommodate the provisions of the New Jersey Prepaid Higher
5 Education Expense Program established pursuant to section 4 of
6 P.L. , c. (C.)(now pending before the Legislature as this bill);
- 7 i. To grant diplomas, certificates or degrees;
- 8 j. To enter into contracts and agreements with the State or any of
9 its political subdivisions or with the United States, or with any public
10 body, department or other agency of the State or the United States or
11 with any individual, firm or corporation which are deemed necessary
12 or advisable by the board for carrying out the provisions of this
13 chapter;
- 14 k. To accept from any government or governmental department,
15 agency or other public or private body or from any other source grants
16 or contributions of money or property which the board may use for or
17 in aid of any of its purposes;
- 18 l. To acquire (by gift, purchase, condemnation or otherwise), own,
19 lease, use and operate property, whether real, personal or mixed, or
20 any interest therein, which is necessary or desirable for college
21 purposes;
- 22 m. To determine that any property owned by the county college is
23 no longer necessary for college purposes and to sell the same at such
24 price and in such manner and upon such terms and conditions as shall
25 be established by the board;
- 26 n. To exercise the right of eminent domain, pursuant to the
27 provisions of Title 20, Eminent Domain, of the Revised Statutes, to
28 acquire any property or interest therein;
- 29 o. To make and promulgate such rules and regulations, not
30 inconsistent with the provisions of this chapter or with the rules and
31 regulations promulgated hereunder that are necessary and proper for
32 the administration and operation of a county college and to implement
33 the provisions of this chapter;
- 34 p. To exercise all other powers, not inconsistent with the
35 provisions of this chapter or with the rules and regulations
36 promulgated hereunder which may be reasonably necessary or
37 incidental to the establishment, maintenance and operation of a county
38 college; and
- 39 q. To establish and maintain a dedicated reserve fund for minor
40 capital needs which in any given year shall not exceed 3% of the
41 replacement value of the college's physical plant.
42 (cf: P.L.1994, c.48, s.128)
- 43
- 44 30. Section 8 of P.L.1982, c.42 (C.18A:64A-57) is amended to
45 read as follows:
- 46 8. The board of trustees shall have general supervision over and be

- 1 vested with the conduct of the college. It shall have the authority and
2 responsibility to:
- 3 a. Adopt and use a corporate seal;
 - 4 b. Sue or be sued;
 - 5 c. Determine the educational curriculum and program of the
6 college;
 - 7 d. With the advice and consent of the board of governors, upon
8 expiration of the term of the current president of the private
9 institution, appoint and fix the compensation and term of office of a
10 president of the college, who shall be the executive officer of the
11 college;
 - 12 e. Appoint, upon nomination of the president, members of the
13 administrative and teaching staff and fix their compensation and terms
14 of employment, subject to the provisions of general law;
 - 15 f. Employ other officers, agents and employees, as may be required
16 to carry out the provisions of this act and fix and determine their
17 qualifications, duties, compensation, terms of office and all other
18 conditions and terms of employment;
 - 19 g. Fix and determine tuition rates and other fees to be paid by
20 students. The tuition and fees shall be set according to guidelines
21 promulgated by the New Jersey Commission on Higher Education to
22 accommodate the provisions of the New Jersey Prepaid Higher
23 Education Expense Program established pursuant to section 4 of
24 P.L. , c. (C.)(now pending before the Legislature as this bill);
 - 25 h. Grant diplomas, certificates or degrees;
 - 26 i. Enter into contracts and agreements with the State or any of its
27 political subdivisions or with the United States, or with any public
28 body, department or other agency of the county, State or United
29 States, or with any individual firm or corporation, which is deemed
30 necessary or advisable by the board for carrying out the provisions of
31 this act;
 - 32 j. Accept from any government or governmental department,
33 agency or other public or private body or from any other source grants
34 or contributions of money or property, which the board of trustees
35 may use for its purposes;
 - 36 k. Disburse all moneys appropriated to the college by the county
37 and State, moneys received from tuition, fees, auxiliary services and
38 other sources, and from or by the direction of the board of governors;
 - 39 l. Direct and control the expenditures of the college as to funds
40 received from the board of governors and other sources in accordance
41 with the terms of any applicable trusts, gifts, bequests, or other special
42 provisions;
 - 43 m. Acquire by gift, purchase, condemnation or otherwise, own,
44 lease, use and operate property, whether real, personal or mixed, or
45 any interest therein, which is necessary or desirable for college
46 purposes;

1 n. Determine that any property owned and controlled by the board
2 of trustees of the county college is no longer necessary for college
3 purposes and sell the same at the price and in the manner and upon the
4 terms and conditions as shall be established by the board;

5 o. Make and promulgate rules and regulations not inconsistent with
6 the provisions of general law or of this act or with the rules and
7 regulations promulgated hereunder that are necessary and proper for
8 the administration or operation of the county college;

9 p. Exercise all other powers not inconsistent with the provisions of
10 this act or with rules and regulations promulgated hereunder, or with
11 general law, which may be reasonable, necessary or incidental to the
12 establishment, maintenance and operation of a county college; and

13 q. Establish and maintain a dedicated reserve fund for minor capital
14 needs, which in any given year shall not exceed 3% of the replacement
15 value of the college's physical plant.

16 (cf: P.L.1994, c.48, s.156)

17
18 31. Section 7 of P.L.1995, c.400 (C.18A:64E-18) is amended to
19 read as follows:

20 7. The board of trustees of the university shall have general
21 supervision over and be vested with the conduct, control, management
22 and administration of the university. It shall have the authority and
23 responsibility to:

24 a. Adopt, use, and modify, as it deems appropriate, its corporate
25 seal;

26 b. Determine the policies for the organization, administration and
27 development of the university;

28 c. Approve the establishment of new educational programs and the
29 discontinuance of existing educational programs at the university
30 consistent with the university's programmatic mission as authorized by
31 the State Board of Higher Education prior to July 1, 1994, or
32 authorized thereafter in accordance with the provisions of the "Higher
33 Education Restructuring Act of 1994," P.L.1994, c.48 (C.18A:3B-1
34 et seq.);

35 d. Study the educational and financial needs of the university,
36 annually acquaint the Governor and Legislature with the condition of
37 the university, and prepare and submit an annual request for
38 appropriation to the Division of Budget and Accounting in the
39 Department of the Treasury in accordance with law;

40 e. Disburse all moneys appropriated to the university by the
41 Legislature and thereafter provided the university and disburse all
42 moneys received from tuition, fees, auxiliary services and other
43 sources;

44 f. Direct and control expenditures and transfers of funds
45 appropriated and provided by the State through its legislative and
46 executive branches and as to funds received from other sources, direct

1 and control expenditures and transfers in accordance with the terms of
2 any applicable trusts, gifts, bequests, or other special provisions. The
3 university shall annually report changes and additions thereto and
4 transfers thereof to the Director of the Division of Budget and
5 Accounting in the Department of the Treasury. All accounts of the
6 university shall be subject to audit by the State at any time;

7 g. Appoint and fix the compensation and term of office of a
8 president of the university, who, as the executive officer of the
9 university, shall be assigned that authority and delegated those duties
10 that the board, consistent with law and duly adopted bylaws of the
11 board, determines are in keeping with the purposes of this act and in
12 the best interests of the university;

13 h. Consistent with the provisions of its budget, this act and any and
14 all controlling collective bargaining agreements, have the power, upon
15 nomination or recommendation of the president, to appoint, remove,
16 promote and transfer all other officers, agents, or employees which
17 may be required to carry out the provisions of this act and prescribe
18 qualifications for those positions, and assign requisite duties and
19 determine and fix respective compensation for those positions in
20 accordance with duly adopted salary program parameters;

21 i. Subject to provision for impartial binding dispute resolution
22 through collective bargaining or as provided by university policy and
23 further subject to and limited by any law to the contrary, have final
24 authority to determine controversies and disputes concerning tenure,
25 personnel matters and other issues involving the university arising
26 under Title 18A of the New Jersey Statutes. Any hearings conducted
27 by the board pursuant to this section shall conform to the requirements
28 of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1
29 et seq.). The final administrative decision of the board, in any action
30 enabled hereunder, is appealable to the Superior Court, Appellate
31 Division;

32 j. Borrow money for the needs of the university, as deemed
33 requisite by the board, in such amounts, for such time and upon such
34 terms as may be determined by the board; provided that no such
35 borrowing shall be deemed or construed to create or constitute a debt,
36 liability, or a loan or pledge of the credit, or be payable out of
37 property or funds, other than moneys appropriated for that purpose,
38 of the State;

39 k. Purchase, lease, acquire by gifts, condemnation or otherwise,
40 manage, use, control, encumber and dispose of property, or any
41 interest therein, whether real, personal or mixed, including, but not
42 limited to, all buildings and grounds, as necessary or deemed desirable
43 for university purposes.

44 (1) Employ architects and engineers to plan buildings and other
45 campus facilities; secure bids for the construction of buildings and for
46 the equipment thereof; make contracts for the construction of

1 buildings and for the equipment thereof; and supervise that
2 construction;

3 (2) Accept from any government or governmental department,
4 agency or other public or private body or from any other source grants
5 or contributions of money or property which the board may use for or
6 in aid of any of its purposes;

7 (3) Adopt standing operating rules and procedures for the purchase
8 of all properties, whether real, personal or mixed and including all
9 equipment, materials and supplies and for the purchase of all services.
10 These rules and procedures shall include public competitive bidding,
11 where the sum to be expended exceeds \$17,700 or the amount
12 determined by the Governor as provided herein and the awarding of
13 contracts to that responsible bidder whose bid, conforming to the
14 invitation for bids, will be most advantageous to the university, price
15 and other factors considered . This public bidding process shall not be
16 required in those exceptions created by the board of trustees of the
17 university, which shall be in substance those exceptions contained in
18 sections 4 and 5 of P.L.1954, c.48 (C.52:34-9 and 10). Neither shall
19 public bidding be required for the supplying of any product or the
20 rendering of any service by a public utility, subject to the jurisdiction
21 of the Board of Public Utilities of the State and tariffs and schedules
22 of the charges, made, charged, or exacted by the public utility for any
23 products to be supplied or services to be rendered as are filed with that
24 board. Commencing January 1, 1997 and every two years thereafter,
25 the Governor, in consultation with the Department of the Treasury,
26 shall adjust the threshold amount set forth in this paragraph in direct
27 proportion to the rise or fall of the consumer price index for all urban
28 consumers in the New York City and the Philadelphia areas as
29 reported by the United States Department of Labor. The Governor
30 shall notify the university of the adjustment. The adjustment shall
31 become effective on July 1 of the year in which it is reported.

32 This subsection shall not prevent the university from having any
33 work done by its own employees, nor shall it apply to repairs, or to the
34 furnishing of materials, supplies or labor or the hiring of equipment or
35 vehicles, when the safety or protection of its or other public property
36 or the public convenience requires or the exigency of the university's
37 service will not admit of such advertisement. In such case, the
38 university shall, by resolution passed by an affirmative vote of its
39 board of trustees, declare the exigency or emergency to exist,
40 remediate as practicable and maintain appropriate records as to the
41 reason for such awards, reporting as soon as practicable thereafter to
42 its board of trustees on all such purchases, the amounts and the
43 reasons therefor;

44 (4) Manage and maintain, and provide for the payment of all
45 charges on and expenses in respect of, all properties utilized by the
46 university;

1 (5) Invest certain moneys in such obligations, securities and other
2 investments as the board shall deem prudent consistent with the
3 purpose and provisions of this act and in accordance with State and
4 federal law, as follows:

5 Investment in not for profit corporations or for profit corporations
6 organized and operated pursuant to the provisions of subsection s. of
7 this section may utilize income realized from the sale or licensing of
8 intellectual property as well as the reinvestment of earnings on
9 intellectual property. Investment in not for profit corporations may
10 also utilize income from overhead grant fund recovery as permitted by
11 federal law as well as other university funds except those specified in
12 paragraph 4 of subsection s. of this section;

13 (6) Exercise the right of eminent domain, pursuant to the
14 provisions of the "Eminent Domain Act of 1971," P.L.1971, c.361
15 (C.20:3-1 et seq.), to acquire any property or interest therein;

16 1. Fix and determine tuition rates, and other fees to be paid by
17 students, after reasonable notice and public hearing pursuant to the
18 provisions of the "Higher Education Restructuring Act of 1994,"
19 P.L.1994, c.48 (C.18A:3B-1 et seq.). The tuition and fees shall be set
20 according to guidelines promulgated by the New Jersey Commission
21 on Higher Education to accommodate the provisions of the New
22 Jersey Prepaid Higher Education Expense Program established
23 pursuant to section 4 of P.L. , c. (C.)(now pending before the
24 Legislature as this bill);

25 m. Grant diplomas, certificates or degrees;

26 n. Enter into contracts and agreements with the State or any of its
27 political subdivisions or with the United States, or with any public
28 body, department or other agency of the State or the United States or
29 with any individual, firm or corporation which are deemed necessary
30 or advisable by the board for carrying out the provisions of this act.
31 A contract or agreement pursuant to this subsection may require a
32 municipality to undertake obligations and duties to be performed
33 subsequent to the expiration of the term of office of the elected
34 governing body of the municipality which initially entered into or
35 approved the contract or agreement, and the obligations and duties so
36 incurred by the municipality shall be binding and of full force and
37 effect, notwithstanding that the term of office of the elected members
38 of the governing body of the municipality which initially entered into
39 or approved that contract or agreement, shall have expired.

40 Pursuant to this subsection, the board of trustees may procure and
41 enter into contracts for any type of insurance and indemnify against
42 loss or damage to property from any cause, including loss of use and
43 occupancy, against death or injury of any person, against employees'
44 liability, against any act of any member, officer, employee or servant
45 of the university, whether part-time, full-time, compensated or
46 non-compensated in the performance of the duties of his office or

1 employment or any other insurable risk. In addition, the university
2 shall carry its own liability insurance or maintain an actuarially sound
3 program of self-insurance. Any joint venture, subsidiary corporation,
4 or partnership or other jural entity entered into or owned wholly or in
5 part by the university shall maintain insurance or reserves in such
6 amounts as are determined by an actuary to be sufficient to meet its
7 actual or accrued claims;

8 o. Adopt bylaws and amend the same as deemed necessary from
9 time to time and make, promulgate and modify at its pleasure such
10 rules, regulations and orders, not inconsistent with the provisions of
11 this act, as are deemed necessary and proper for the administration and
12 operation of the university and to implement the provisions of this act;

13 p. Develop an institutional plan and determine the schools,
14 departments, programs and degree levels to be offered by the
15 university consistent with that plan and the university's programmatic
16 mission as authorized by the State Board of Higher Education prior to
17 July 1, 1994, or authorized thereafter in accordance with the
18 provisions of the "Higher Education Restructuring Act of 1994,"
19 P.L.1994, c.48 (C.18A: 3B-1 et seq.);

20 q. Function as a public employer under the "New Jersey
21 Employer-Employee Relations Act," P.L.1941, c.100 (C.34:13A-1 et
22 seq.), appointing its chief spokesperson and continuing to conduct all
23 labor negotiations with the participation of the Governor's Office of
24 Employee Relations;

25 r. Continue to retain independent counsel;

26 s. Participate as the general partner or as a limited partner, either
27 directly or through a subsidiary corporation created by the university,
28 in limited partnerships, general partnerships, or joint ventures engaged
29 in the development, manufacture, or marketing of products,
30 technology, scientific information or services and create or form for
31 profit or not for profit corporations to engage in such activities;
32 provided that any such participation shall be consistent with the
33 mission of the university and the board shall have determined that such
34 participation is prudent.

35 (1) The decision to participate in any of the activities described in
36 this subsection, including the creation or formation of for profit or not
37 for profit corporations, shall be articulated in the minutes of the board
38 of trustees meeting in which action was approved. A true copy of the
39 minutes of that meeting shall be delivered to the Governor. No such
40 action shall take effect until 30 days, Saturdays, Sundays and public
41 holidays excepted, after the copy of the minutes shall have been
42 delivered to the Governor. If, within the 30-day period, the Governor
43 returns the minutes of the meeting with a veto of the action taken by
44 the board, the action taken by the board shall be null and void and of
45 no effect.

46 (2) Any actions taken by the university pursuant to this subsection

1 shall be in conformity with the university's policy on conflicts of
2 interest and the provisions of P.L.1971, c.182 (C.52:13D-12 et seq.),
3 which shall apply to the university, its employees and officers.

4 (3) Nothing herein shall be deemed or construed to create or
5 constitute a debt, liability, or a loan or pledge of the credit or be
6 payable out of property or funds of the State.

7 (4) Funds directly appropriated to the university from the State or
8 derived from the university's academic programs shall not be utilized
9 by the for profit or not for profit corporations organized and operated
10 pursuant to this subsection in the development, manufacture or
11 marketing of products, technology or scientific information.

12 (5) Employees of any joint venture, subsidiary corporation,
13 partnership or other jural entity entered into or owned wholly or in
14 part by the university shall not be deemed public employees.

15 (6) A joint venture, subsidiary corporation, partnership or other
16 jural entity entered into or owned wholly or in part by the university
17 shall not be deemed an instrumentality of the State of New Jersey.

18 (7) Income realized by the university as a result of participation in
19 the development, manufacture or marketing of products, technology,
20 or scientific information may be invested, reinvested or retained by the
21 board in accordance with the provisions of this act and any other State
22 or federal law for use in furtherance of any of the purposes of this act
23 or of other applicable statutes.

24 (8) The board shall include in its annual report to the State
25 Treasurer, the operation of all joint ventures, subsidiary corporations,
26 partnerships or other jural entities entered into or owned wholly or in
27 part by the university;

28 t. Create, operate, or participate in the operation of such auxiliary
29 organizations as permitted by law which the board deems prudent and
30 which are in keeping with the educational and public service mission
31 of the university; and

32 u. Sue and be sued in its own name.

33 (cf: P.L.1995, c.400, s.7)

34

35 32. Section 6 of P.L.1970, c.102 (C.18A:64G-6) is amended to
36 read as follows:

37 6. The board of trustees of the university shall have the general
38 supervision over and be vested with the conduct of the university,
39 including its health care facilities regardless of the source of funding.
40 It shall have the power and duty to:

41 (a) Adopt and use a corporate seal;

42 (b) Determine the educational curriculum and program of the
43 university;

44 (c) Determine policies for the organization, administration, and
45 development of the university;

46 (d) Study the educational and financial needs of the university,

1 annually acquaint the Governor and Legislature with the condition of
2 the university, and prepare and submit an annual request for
3 appropriation to the Division of Budget and Accounting in the
4 Department of the Treasury in accordance with law;

5 (e) Disburse all moneys appropriated to the university by the
6 Legislature and all moneys received from tuition, fees, auxiliary
7 services and other sources;

8 (f) Direct and control expenditures and transfers of funds
9 appropriated to the university in accordance with the provisions of the
10 State budget and appropriation acts of the Legislature, and, as to funds
11 received from other sources, direct and control expenditures and
12 transfers in accordance with the terms of any applicable trusts, gifts,
13 bequests, or other special provisions, reporting changes and additions
14 thereto and transfers thereof to the Director of the Division of Budget
15 and Accounting in the Department of the Treasury. All accounts of the
16 university shall be subject to audit by the State at any time;

17 (g) In accordance with the provisions of the State budget and
18 appropriation acts of the Legislature, appoint and fix the compensation
19 and term of office of a president of the university who shall be the
20 executive officer of the university;

21 (h) In accordance with the provisions of the State budget and
22 appropriation acts of the Legislature, appoint, upon nomination of the
23 president, such deans and other members of the academic,
24 administrative and teaching staffs as shall be required and fix their
25 compensation and terms of employment;

26 (i) In accordance with the provisions of the State budget and
27 appropriation acts of the Legislature, appoint, remove, promote and
28 transfer such other officers, agents, or employees as may be required
29 to carry out the provisions of this act and assign their duties,
30 determine their salaries, and prescribe qualifications for all positions
31 and in accordance with the salary schedules of the Civil Service
32 Commission wherever possible;

33 (j) Fix and determine tuition rates, and other fees to be paid by
34 students. The tuition and fees shall be set according to guidelines
35 promulgated by the New Jersey Commission on Higher Education to
36 accommodate the provisions of the New Jersey Prepaid Higher
37 Education Expense Program established pursuant to section 4 of
38 P.L. , c. (C.)(now pending before the Legislature as this bill);

39 (k) Grant diplomas, certificates or degrees;

40 (l) Enter into contracts and agreements with the State or any of its
41 political subdivisions or with the United States, or with any public
42 body, department or other agency of the State or the United States or
43 with any individual, firm or corporation which are deemed necessary
44 or advisable by the board for carrying out the provisions of this act.
45 A contract or agreement pursuant to this subsection may require a
46 municipality to undertake obligations and duties to be performed

1 subsequent to the expiration of the term of office of the elected
2 governing body of such municipality which initially entered into or
3 approved said contract or agreement, and the obligations and duties so
4 incurred by such municipality shall be binding and of full force and
5 effect, notwithstanding that the term of office of the elected governing
6 body of such municipality which initially entered into or approved said
7 contract or agreement, shall have expired;

8 (m) Accept from any government or governmental department,
9 agency or other public or private body or from any other source grants
10 or contributions of money or property which the board may use for or
11 in aid of any of its purposes;

12 (n) (1) Acquire (by gift, purchase, condemnation or otherwise),
13 own, lease, dispose of, use and operate property, whether real,
14 personal or mixed, or any interest therein, which is necessary or
15 desirable for university purposes;

16 (2) Adopt standing operating rules and procedures for the purchase
17 of all equipment, materials, supplies and services; however, no
18 contract on behalf of the university shall be entered into for the
19 purchase of services, materials, equipment and supplies, for doing of
20 any work, or for the hiring of equipment or vehicles, where the sum to
21 be expended exceeds \$12,500.00 or the amount determined by the
22 Governor as provided herein, unless the university shall first publicly
23 advertise for bids and shall award the contract to that responsible
24 bidder whose bid, conforming to the invitation for bids, will be most
25 advantageous to the university, price and other factors considered.
26 Such advertising shall not be required in those exceptions created by
27 the board of trustees of the university, which shall be in substance
28 those exceptions contained in sections 4 and 5 of P.L.1954, c.48
29 (C.52:34-9 and 10) or for the supplying of any product or the
30 rendering of any service by a public utility subject to the jurisdiction
31 of the Board of Public Utilities of this State and tariffs and schedules
32 of the charges, made, charged, or exacted by the public utility for any
33 such products to be supplied or services to be rendered are filed with
34 the said board. Commencing January 1, 1985 and every two years
35 thereafter, the Governor, in consultation with the Department of the
36 Treasury, shall adjust the threshold amount set forth in this paragraph
37 in direct proportion to the rise or fall of the consumer price index for
38 all urban consumers in the New York City and the Philadelphia areas
39 as reported by the United States Department of Labor. The Governor
40 shall notify the university of the adjustment. The adjustment shall
41 become effective on July 1 of the year in which it is reported.

42 This subsection shall not prevent the university from having any
43 work done by its own employees, nor shall it apply to repairs, or to the
44 furnishing of materials, supplies or labor, or the hiring of equipment or
45 vehicles, when the safety or protection of its or other public property
46 or the public convenience requires or the exigency of the university's

1 service will not admit of such advertisement. In such case, the
2 university shall, by resolution passed by the affirmative vote of its
3 board of trustees, declare the exigency or emergency to exist, and set
4 forth in the resolution the nature and approximate amount to be
5 expended; shall maintain appropriate records as to the reason for such
6 awards; and shall report regularly to its board of trustees on all such
7 purchases, the amounts and the reasons therefor;

8 (3) Employ architects to plan buildings; secure bids for the
9 construction of buildings and for the equipment thereof; make
10 contracts for the construction of buildings and for equipment; and
11 supervise the construction of buildings;

12 (4) Manage and maintain, and provide for the payment of all
13 charges on and expenses in respect of, all properties utilized by the
14 university; and

15 (5) Invest certain moneys in such obligations, securities and other
16 investments as the board shall deem prudent in accordance with State
17 and federal law, as follows:

18 In not for profit corporations utilizing income realized from the sale
19 or licensing of intellectual property, as well as the reinvestment of
20 earnings on intellectual property; income realized from the operation
21 of faculty practice plans of the university; and income from overhead
22 grant fund recovery as permitted by federal law;

23 In for profit corporations utilizing income realized from the sale or
24 licensing of intellectual property, as well as the reinvestment of
25 earnings on intellectual property.

26 (o) Borrow money and to secure the same by a mortgage on its
27 property or any part thereof, and to enter into any credit agreement for
28 the needs of the university, as deemed requisite by the board, in such
29 amounts and for such time and upon such terms as may be determined
30 by the board, provided that no such borrowing shall be deemed or
31 construed to create or constitute a debt, liability, or a loan or pledge
32 of the credit or be payable out of property or funds, other than moneys
33 appropriated for that purpose, of the State;

34 (p) Exercise the right of eminent domain, pursuant to the
35 provisions of the "Eminent Domain Act of 1971," P.L.1971, c.361
36 (C.20:3-1 et seq.), to acquire any property or interest therein;

37 (q) Adopt bylaws and make and promulgate such rules, regulations
38 and orders, not inconsistent with the provisions of this act as are
39 necessary and proper for the administration and operation of the
40 university and to implement the provisions of this act;

41 (r) Authorize any new program, educational department or school
42 not inconsistent with the programmatic mission of the institution or
43 approved by the Commission on Higher Education which will require,
44 at the time of establishment or thereafter, an additional expenditure of
45 money, if provision is made therefor by law;

46 (s) Function as a public employer under the "New Jersey

1 Employer-Employee Relations Act," P.L.1941, c.100 (C.34:13A-1 et
2 seq.) and conduct all labor negotiations, and with the participation of
3 the Governor's Office of Employee Relations act as the chief
4 spokesperson with respect to all matters under negotiation;

5 (t) Sue and be sued in its own name;

6 (u) Retain independent counsel including representation by the
7 Attorney General in accordance with subsection h. of section 6 of
8 P.L.1994, c.48 (C.18A:3B-6);

9 (v) (1) Participate as the general partner or as a limited partner,
10 either directly or through a subsidiary corporation created by the
11 university, in limited partnerships, general partnerships, or joint
12 ventures engaged in the development, manufacture, or marketing of
13 products, technology, scientific information or health care services and
14 create or form for profit or not for profit corporations to engage in
15 such activities; provided that any such participation shall be consistent
16 with the mission of the university and the board shall have determined
17 that such participation is prudent. Nothing herein shall be construed
18 to authorize any change in the legal status of University Hospital;

19 (2) The decision to participate in any activity described in
20 paragraph (1) of subsection (v) of section 6 of P.L.1970, c.102
21 (C.18A:64G-6), including the creation or formation of for profit or not
22 for profit corporations, shall be articulated in the minutes of the Board
23 of Trustees meeting in which the action was approved. A true copy
24 of the minutes shall be delivered to the Governor. No such action
25 shall have affect until 30 days, Saturdays, Sundays and public holidays
26 excepted, after the copy of the minutes shall have been delivered to the
27 Governor. If, within the 30-day period, the Governor returns the
28 minutes of the meeting with a veto of the action taken by the board,
29 the action taken by the board shall be null and void and of no effect;

30 (3) The provisions of P.L.1971, c.182 (C.52:13D-12 et seq.) shall
31 continue to apply to the university, its employees and officers;

32 (4) Nothing herein shall be deemed or construed to create or
33 constitute a debt, liability, or a loan or pledge of the credit or be
34 payable out of property or funds of the State;

35 (5) Funds directly appropriated to the university from the State or
36 derived from the university's academic programs or derived from
37 payment for coverage provided by the self insurance fund for claims
38 accruing prior to the effective date of this act shall not be utilized in
39 the development, manufacture or marketing of products, technology
40 or scientific information;

41 (6) Employees of any joint venture, subsidiary corporation,
42 partnership or other jural entity entered into or owned wholly or in
43 part by the university shall not be deemed public employees;

44 (7) A joint venture, subsidiary corporation, partnership or other
45 jural entity entered into or owned wholly or in part by the university
46 shall not be deemed an instrumentality of the State of New Jersey;

1 (8) Income realized by the university as a result of participation in
2 the development, manufacture or marketing of products, technology,
3 or scientific information may be invested or reinvested pursuant to
4 paragraph (5) of subsection (n) of section 6 of P.L.1970, c.102
5 (C.18A:64G-6) or retained by the board for use in furtherance of any
6 of the purposes of this act;

7 (9) The board shall annually report to the State Treasurer on the
8 operation of all joint ventures, subsidiary corporations, partnerships or
9 such other jural entities entered into or owned wholly or in part by the
10 university;

11 (w) (1) Procure and enter into contracts for any type of insurance
12 and indemnify against loss or damage to property from any cause,
13 including loss of use and occupancy, against death or injury of any
14 person, against employees' liability, against any act of any member,
15 officer, employee or servant of the university, whether part-time,
16 full-time, compensated or non-compensated in the performance of the
17 duties of his office or employment or any other insurable risk. In
18 addition, the university shall carry its own liability insurance or
19 maintain an actuarially sound program of self insurance. Any joint
20 venture, subsidiary corporation, or partnership or such other jural
21 entity entered into or owned wholly or in part by the university shall
22 carry insurance or maintain reserves in such amounts as are determined
23 by an actuary to be sufficient to meet its actual or accrued claims;

24 (2) Moneys in the fund known as the Self-Insurance Trust Fund
25 administered by the State Treasurer shall continue to be available to
26 the university solely to indemnify and defend claims against the
27 university and its employees, officers and servants but only to the
28 extent that the University has elected on behalf of itself and its
29 employees to obtain representation from the Attorney General
30 pursuant to subsection h. of section 6 of P.L.1994, c.48 (C.18A:3B-6)
31 and such entity or individuals would have been entitled to defense and
32 indemnification pursuant to the "New Jersey Tort Claims Act,"
33 N.J.S.59:1-1 et seq., as a State entity or State employee but for the
34 provision of subsection (t) of section 6 of P.L.1970, c.102
35 (C.18A:64G-6). Any expenditure of such funds shall be made only in
36 accordance with the provisions of the "New Jersey Tort Claims Act,"
37 N.J.S.59:1-1 et seq., including but not limited to the provisions of
38 chapters 10, 10A and 11 of Title 59 of the New Jersey Statutes.
39 Nothing herein shall be construed to authorize the use of the
40 Self-Insurance Trust Fund to indemnify or insure in any way, directly
41 or indirectly the activities of any joint venture, partnership or
42 corporation entered into or created by the university pursuant to
43 paragraphs (1) and (2) of subsection (v) of section 6 of P.L.1970,
44 c.102 (C.18A:64G-6); and

45 (x) Create auxiliary organizations subject to the provisions of

1 P.L.1982, c.16 (C.18A:64-26 et seq.).
2 (cf: P.L.1994, c.48, s.169)

3

4 33. This act shall take effect immediately.

5

6

7

STATEMENT

8

9 This bill is entitled the "New Jersey Prepaid Higher Education
10 Expense Program Act of 1996." It establishes the New Jersey Prepaid
11 Higher Education Expense Program, to provide a mechanism through
12 which the cost of tuition, registration fees, and dormitory residence
13 may be paid in advance of enrollment in a public institution of higher
14 education at a rate lower than the cost at the time of actual enrollment.

15 The bill provides for the creation of the Prepaid Higher Education
16 Expense Board, in but not of, the Department of the Treasury. The
17 board will consist of the Treasurer, the chairman of the Commission
18 on Higher Education, or their designees, and five members appointed
19 by the Governor who will possess knowledge, skill and experience in
20 the areas of accounting, actuary, risk management, or investment
21 management. The board will be responsible for administering the New
22 Jersey Prepaid Higher Education Expense Program.

23 The board, pursuant to the bill, will develop two types of advance
24 payment contracts, one for tuition and registration fees and the other
25 for dormitory residence. The bill sets forth provisions that must be
26 included in both types of advance payment contracts. These
27 provisions include:

28 - the amount of the payment and the number of payments required;
29 - the terms and conditions under which a purchaser will remit
30 payments, including, but not limited to, the dates upon which each
31 payment will be due;

32 - provisions for late payment charges and for default;

33 - provisions for penalty fees for withdrawals from the fund;

34 - the name and date of birth of the qualified beneficiary on whose
35 behalf the contract is drawn and the terms and conditions under which
36 another person may be substituted as the qualified beneficiary;

37 - the name of any person who may cancel the contract;

38 - the terms and conditions under which a contract may be canceled,
39 the name of the person entitled to any refund due as a result of the
40 cancellation, and the amount of refund, if any, due to the person
41 named;

42 - the time limitations, if any, within which the qualified beneficiary
43 must claim benefits through the program; and

44 - other terms and conditions deemed by the board to be necessary
45 or proper.

46 In addition to these general provisions, the bill also requires that

1 each type of advance payment contract include specific provisions.
2 The advance payment contract for tuition and registration fees, for
3 example, will have to include the number of semester credit hours
4 contracted by the purchaser and whether the credit hours will be
5 applied toward a four- year public institution of higher education or a
6 county college. This type of advance payment contract will also
7 include a provision obligating the board to provide to the qualified
8 beneficiary the specified number of semester credit hours, not to
9 exceed the average number of credit hours required for the conference
10 of the degree that corresponds to the plan purchased on behalf of the
11 qualified beneficiary.

12 An advance payment contract for dormitory residence will have to
13 include the number of semesters of dormitory residence contracted by
14 the purchaser. This advance payment contract, similar to the advance
15 payment contract for tuition and registration fees, will have to include
16 a provision obligating the board to provide to a qualified beneficiary
17 the specified number of semesters of dormitory residence, not to
18 exceed the maximum number of semesters of full-time enrollment
19 required for the conference of a baccalaureate degree.

20 Under the bill, the board will be required to make advance payment
21 contracts available for three independent plans, to be known as the
22 county college plan, the university plan, and the dormitory residence
23 plan. Through a county college plan, the advance payment contract
24 will provide prepaid tuition and registration fees for a specified
25 number of undergraduate semester credit hours not to exceed the
26 average number of hours required for the conference of an associate
27 degree. Through a university plan, the advance payment contract will
28 provide prepaid tuition and registration fees for a specified number of
29 undergraduate semester credit hours not to exceed the average number
30 of hours required for the conference of a baccalaureate degree. The
31 cost of participating in each of these plans will be based primarily on
32 the average current and projected tuition and registration fees within
33 the county college system or the four-year public institutions of higher
34 education, respectively, and the number of years expected to elapse
35 between the purchase of the plan and the exercise of the benefits by
36 the qualified beneficiary.

37 Through the dormitory plans, the advance payment contract will
38 provide prepaid housing fees for a maximum of 10 semesters of full-
39 time undergraduate enrollment in a four-year public institution of
40 higher education. These plans are optional, and may be purchased
41 only in conjunction with a university plan. As with the university plan,
42 costs of participation will be based primarily on the average current
43 and projected housing fees within the four-year public institutions of
44 higher education and the number of years expected to elapse between
45 the purchase of the plan and the exercise of the benefits by the
46 qualified beneficiary.

1 The bill permits any of these plans to be applied toward any
2 independent institution of higher education located within the State.
3 Under these circumstances, the board will transfer to these institutions
4 an amount not to exceed the redemption value of the advance payment
5 contract within a public institution of higher education. If the costs at
6 the independent institution of higher education is less than the
7 corresponding costs at a public institution of higher education, then
8 the amount transferred may not exceed the actual cost of tuition and
9 registration fees or housing fees.

10 The bill also permits the benefits of an advance payment contract to
11 be applied toward an out-of-state public college or university. To be
12 eligible, these institutions must be not for profit, accredited by a
13 regional accrediting association and confer baccalaureate degrees.
14 Under these circumstances, the board will transfer to these institutions
15 an amount not to exceed the redemption value of the advance payment
16 contract or the original purchase price plus 5% compounded interest,
17 whichever is less, after assessment of a reasonable transfer fees. If the
18 costs at the out-of-state public college or university are less than the
19 calculated amount, then the amount transferred may not exceed the
20 actual cost of tuition and registration fees or housing fees.

21 The bill states that it should not be construed as providing or
22 guaranteeing that a qualified beneficiary of an advance payment
23 contract will be admitted to a public institution of higher education or
24 to a particular one of these institutions, will be allowed to continue
25 enrollment at one of these institutions after admission or will be
26 graduated from one of these institutions.

27 The bill guarantees that in the event that moneys in the fund are
28 insufficient to offset the obligations of the board, then the State will
29 meet those obligations. As a measure of protection for the State, the
30 bill also allows the Commission on Higher Education to promulgate
31 guidelines which will govern the setting of tuition and other fees by
32 the public institutions of higher education.

33 Finally, the bill provides that if the State Treasurer determines that
34 the program is financially infeasible, the State may discontinue the
35 program. In this case a qualified beneficiary who has been accepted
36 by and is enrolled or is within five years of enrollment in an
37 independent institution of higher education or public institution of
38 higher education will be entitled to exercise the benefits for which he
39 has contracted. Other contract holders will receive a refund of the
40 amount paid into the fund plus interest at the prevailing rate.

ASSEMBLY, No. 2296

STATE OF NEW JERSEY 209th LEGISLATURE

INTRODUCED MARCH 27, 2000

Sponsored by:

Assemblyman ANTHONY IMPREVEDUTO

District 32 (Bergen and Hudson)

Assemblyman JEFFREY W. MORAN

District 9 (Atlantic, Burlington and Ocean)

Co-Sponsored by:

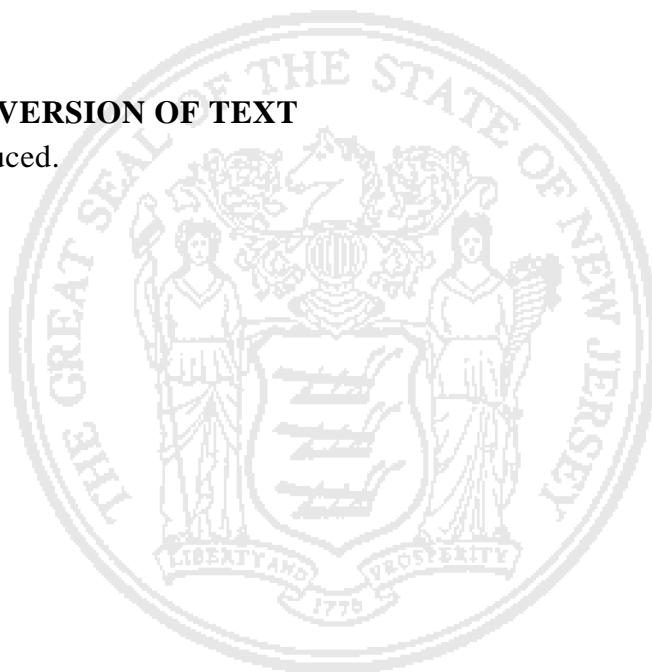
**Assemblyman Gusciora, Assemblywoman Greenstein, Assemblymen
Steele, Stanley and Zecker**

SYNOPSIS

Establishes New Jersey Prepaid Higher Education Expense Program.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT establishing a Prepaid Higher Education Expense Program
2 and supplementing Title 18A of the New Jersey Statutes.

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. This act shall be known and may be cited as the "New Jersey
8 Prepaid Higher Education Expense Program Act of 2000."

9
10 2. The Legislature finds and declares: that educational opportunity
11 at the college and university level is a critical State interest which is
12 linked to the needs of the State to ensure a well-educated work force;
13 that educational opportunity is best ensured through the provision of
14 institutions of higher education which are geographically and
15 financially accessible; that it is in the best interests of this State to
16 adopt and foster mechanisms which will encourage its citizens to
17 engage in the timely financial planning which is necessary to guarantee
18 that students will have the financial resources necessary to pursue a
19 higher education given the annually escalating level of resources which
20 such attendance requires; and that one such mechanism which has
21 proven successful in some other states is the establishment of a
22 program through which many of the costs associated with attendance
23 at institutions of higher education may be paid in advance and fixed
24 at a guaranteed level for the duration of undergraduate enrollment.

25
26 3. As used in this act:

27 "Advance payment contract" means a contract entered into by the
28 board and a purchaser pursuant to the provisions of this act;

29 "Board" means the Prepaid Higher Education Expense Board
30 established pursuant to section 7 of this act.

31 "Fund" means the Prepaid Higher Education Expense Trust Fund
32 established pursuant to section 5 of this act.

33 "Independent institution of higher education" means those
34 institutions of higher education incorporated and located in this State,
35 which, by virtue of law or character or license, are nonprofit
36 educational institutions empowered to grant academic degrees and
37 which provide a level of education which is equivalent to the education
38 provided by the State's public institutions of higher education as
39 attested by the receipt of and continuation of regional accreditation by
40 the Middle States Association of Colleges and Schools, and which are
41 eligible to receive State aid under the provisions of the Constitution of
42 the United States and the Constitution of the State of New Jersey.
43 "Independent institution of higher education" does not include any
44 educational institution dedicated primarily to the preparation or
45 training of ministers, priests, rabbis, or other professional persons in
46 the field of religion.

1 "Purchaser" means a person who makes or is obligated to make
2 payments in accordance with an advance payment contract.

3 "Qualified beneficiary" means:

4 a. a resident of this State at the time a purchaser enters into an
5 advance payment contract on behalf of the resident; or

6 b. a nonresident who is the child of a noncustodial parent who is
7 a resident of the State at the time that the parent enters into an
8 advance payment contract on behalf of the child.

9 "Public institution of higher education" means Rutgers, The State
10 University, the State colleges or universities established pursuant to
11 chapter 64 of Title 18A of the New Jersey Statutes, the New Jersey
12 Institute of Technology, the University of Medicine and Dentistry of
13 New Jersey, the county colleges and any other public university or
14 college now or hereafter established or authorized by State law.

15 "Program" means the New Jersey Prepaid Higher Education
16 Expense Program established pursuant to section 4 of this act.

17 "Registration fees" means any fees imposed by an institution of
18 higher education, in addition to tuition, required for matriculation at
19 the institution.

20
21 4. There is established the New Jersey Prepaid Higher Education
22 Expense Program to provide a mechanism through which the cost of
23 tuition, registration fees, and dormitory residence may be paid in
24 advance of enrollment in a public institution of higher education at a
25 rate lower than the projected corresponding cost at the time of actual
26 enrollment. Under the program, moneys remitted in accordance with
27 advance payment contracts shall be combined and invested in a
28 manner that yields, at a minimum, sufficient interest to generate the
29 difference between the prepaid amount and the cost of tuition,
30 registration fees, and dormitory residence at the time of actual
31 enrollment. A student who enrolls in a public institution of higher
32 education pursuant to this act shall not be charged any fees in excess
33 of the terms set forth in the advance payment contract.

34
35 5. There is created within the Department of the Treasury the
36 Prepaid Higher Education Expense Trust Fund. The fund shall consist
37 of State appropriations, moneys acquired from other governmental or
38 private sources, and moneys remitted in accordance with advance
39 payment contracts. Dividends, interest, and gains accruing to the
40 fund shall increase the total funds available for the program. Any
41 funds associated with contracts terminated pursuant to section 15 of
42 this act or with canceled contracts for which refunds have not been
43 claimed shall increase the total funds available for the program.
44 However, the board shall establish procedures for notifying purchasers
45 who cancel a contract of any unclaimed refund and shall establish a
46 time period after which a refund may not be claimed.

1 Any balance contained in the fund at the end of a fiscal year shall
2 remain therein and shall be available for carrying out the purposes of
3 the program.

4
5 6. The assets of the fund shall be maintained, invested, and
6 expended solely for the purposes of this act and shall not be loaned,
7 transferred, or otherwise used by the State for any purpose other than
8 the purposes of this act. This section shall not be construed to
9 prohibit the board from investing in, by purchase or otherwise, bonds,
10 notes, or other obligations of the State or an agency or instrumentality
11 of the State. Unless otherwise specified by the board, assets of the
12 fund shall be expended in the following order of priority:

13 a. to make payments to institutions of higher education on behalf
14 of qualified beneficiaries;

15 b. to make refunds upon cancellation of advance payment
16 contracts; and

17 c. to pay the costs of program administration and operations.

18
19 7. a. The program shall be administered by the Prepaid Higher
20 Education Expense Board. The board is established as a body
21 corporate and politic in the Executive Branch of State Government
22 and for the purposes of complying with the provisions of Article V,
23 Section IV, paragraph 1 of the New Jersey Constitution, the board is
24 allocated in but not of the Department of the Treasury, but
25 notwithstanding this allocation, the board shall be independent of any
26 supervision or control by the department or by any board or officer
27 thereof.

28 b. The board shall consist of seven members including the State
29 Treasurer, the chairman of the Commission on Higher Education, and
30 five members appointed by the Governor with the advice and consent
31 of the Senate without regard for political affiliation. Each member
32 appointed by the Governor shall possess knowledge, skill, and
33 experience in the areas of accounting, actuary, risk management, or
34 investment management. The State Treasurer and the Chairman of the
35 Commission on Higher Education may each appoint a designee to sit
36 on the board; however, any designee named shall meet the
37 qualifications required of gubernatorial appointees to the board.
38 Members appointed by the Governor shall serve terms of three years
39 except that in making the initial appointments, the Governor shall
40 appoint one member to serve for one year, two members to serve for
41 two years, and two members to serve for three years. Any member
42 appointed to fill a vacancy on the board shall be appointed in a like
43 manner and shall serve until a successor qualifies. Members of the
44 board shall serve without compensation but shall be reimbursed for any
45 necessary expenses incurred in the performance of their duties.

1 8. The Governor shall appoint a member of the board to serve as
2 the initial chair of the board. Thereafter, the board shall elect a chair
3 annually. The board shall annually elect a board member to serve as
4 vice-chair and shall designate a secretary-treasurer who need not be a
5 member of the board. The secretary-treasurer shall keep a record of
6 the proceedings of the board and shall be the custodian of all printed
7 material filed with or by the board and of its official seal.
8 Notwithstanding the existence of vacancies on the board, a majority of
9 the members shall constitute a quorum. The board shall take no
10 official action in the absence of a quorum. The board shall meet, at a
11 minimum, on a quarterly basis at the call of the chair.

12
13 9. The board shall have the powers necessary or proper to carry
14 out the provisions of this act, including, but not limited to, the power
15 to:

- 16 a. appoint an executive director to serve as the chief administrative
17 and operational officer of the board and to perform other duties
18 assigned by the board;
- 19 b. adopt an official seal and rules;
- 20 c. sue and be sued;
- 21 d. make and execute contracts and other necessary instruments;
- 22 e. establish agreements or other transactions with federal, State,
23 and local agencies, including public institutions of higher education;
- 24 f. invest funds not required for immediate disbursement;
- 25 g. appear in its own behalf before boards, commissions, or other
26 governmental agencies;
- 27 h. hold, buy, and sell any instruments, obligations, securities, and
28 property determined appropriate by the board;
- 29 i. require a reasonable length of State residence for qualified
30 beneficiaries;
- 31 j. restrict the number of participants in the county college plan,
32 university plan, and dormitory residence plan, as those plans are
33 defined in section 18 of this act. A person denied participation solely
34 on the basis of this restriction shall be granted priority for
35 participation during the succeeding year;
- 36 k. segregate contributions and payments to the fund into various
37 accounts;
- 38 l. contract for necessary goods and services, employ necessary
39 personnel, and engage the services of private consultants, actuaries,
40 managers, legal counsel, and auditors for administrative or technical
41 assistance;
- 42 m. solicit and accept gifts, grants, loans, and other aids from any
43 source or participate in any other way in any government program to
44 carry out the purposes of this act;
- 45 n. require and collect administrative fees and charges in connection
46 with any transaction and impose reasonable penalties, including

1 default, for delinquent payments or for entering into an advance
2 payment contract on a fraudulent basis;

3 o. procure insurance against any loss in connection with the
4 property, assets, and activities of the fund or the board;

5 p. impose reasonable time limits on use of the tuition benefits
6 provided by the program. This limitation shall be specified within the
7 advance payment contract;

8 q. delineate the terms and conditions under which payments may
9 be withdrawn from the fund and impose reasonable fees and charges
10 for withdrawals. The terms and conditions shall be specified within
11 the advance payment contract;

12 r. provide for the receipt of contributions in lump sums or
13 installment payments;

14 s. establish other policies, procedures, and criteria to implement
15 and administer the provisions of this act; and

16 t. require that purchasers of advance payment contracts verify,
17 under oath, any requests for contract conversions, substitutions,
18 transfers, cancellations, refund requests, or contract changes of any
19 nature.

20

21 10. The board shall administer the fund in a manner that is
22 sufficiently actuarially sound to defray the obligations of the program.
23 The board shall annually evaluate or cause to be evaluated the
24 actuarial soundness of the fund. If the board determines a need for
25 additional assets in order to preserve actuarial soundness, the board
26 may adjust the terms of subsequent advance payment contracts to
27 ensure soundness.

28

29 11. a. The board, acting with the approval of the State Treasurer,
30 shall establish a comprehensive investment plan for the purposes of
31 this act. The comprehensive investment plan shall specify the
32 investment policies to be utilized by the board in its administration of
33 the fund. The board may place assets of the fund in savings accounts
34 or use the funds to purchase fixed or variable life insurance or annuity
35 contracts, securities, evidence of indebtedness, or other investment
36 products, pursuant to the comprehensive investment plan and in such
37 proportions as may be designated or approved under that plan. The
38 insurance, annuity, savings, or investment products shall be
39 underwritten and offered in compliance with the applicable federal and
40 State laws and regulations and by persons who are duly authorized by
41 applicable federal and State authorities. Within the comprehensive
42 investment plan, the board may authorize investment vehicles, or
43 products incident thereto, as may be available or offered by qualified
44 companies or persons.

45 b. The board may delegate responsibility for administration of the
46 comprehensive investment plan required pursuant to subsection a. of

1 this section to a person the board determines to be qualified. The
2 person shall be compensated by the board. Directly or through that
3 person, the board may contract with a private corporation or
4 institution to provide such services as may be a part of the
5 comprehensive investment plan or as may be deemed necessary or
6 proper by the board or designated person, including, but not limited
7 to, providing consolidated billing, individual and collective record
8 keeping and accounting, and asset purchase, control, and safekeeping.

9 c. The board shall annually prepare or cause to be prepared a
10 report setting forth in appropriate detail an accounting of the fund and
11 a description of the financial condition of the program at the close of
12 each fiscal year. The report shall be submitted to the Governor, the
13 President of the Senate, the Speaker of the General Assembly, the
14 State Treasurer and members of the Commission on Higher Education
15 on or before August 1 each year. In addition, the board shall make the
16 report available to purchasers of advance payment contracts. The
17 board shall provide to the Commission on Higher Education by
18 August 1 each year complete advance payment contract sales
19 information including projected higher education enrollments of
20 qualified beneficiaries. The accounts of the funds shall be subject to
21 annual audits by the State Auditor or his designee.

22 d. The board shall solicit answers to applicable ruling requests
23 from the federal Internal Revenue Service regarding the tax status of
24 fees paid pursuant to an advance payment contract to the purchaser or
25 qualified beneficiary and from the Securities and Exchange
26 Commission regarding the application of federal securities laws to the
27 fund. The board shall make the status of the requests known before
28 entering into an advance payment contract.

29 e. The board shall solicit proposals for the marketing of the
30 program. The entity designated pursuant to this subsection shall serve
31 as a centralized marketing agent for the program and shall be solely
32 responsible for the marketing of the program. Materials produced for
33 the purpose of marketing the program shall be submitted to the board
34 for review and approval. Marketing materials shall not be made
35 available or distributed to the public prior to the materials being
36 approved by the board. An institution of higher education may
37 distribute marketing materials produced for the program. The State
38 and the board shall not be liable for misrepresentation of the program
39 by a marketing agent.

40 f. The board may make available insurance coverage written
41 exclusively for the purpose of protecting advance payment contracts,
42 and the purchasers or beneficiaries thereof, which may be issued in the
43 form of a group term life policy to purchasers of advance payment
44 contracts.

45

46 12. The board shall develop advance payment contracts for tuition

1 and registration fees and advance payment contracts for dormitory
2 residence. Advance payment contracts shall be exempt from the
3 provisions of Subtitle 3 of Title 17 of the Revised Statutes and Subtitle
4 3 of Title 17B of the New Jersey Statutes. The board may request
5 assistance from the Office of the Attorney General in the development
6 of the advance payment contracts. The contents of both types of
7 contracts shall include, but not be limited to, the following:

- 8 a. the amount of the payments and the number of payments
9 required from a purchaser;
- 10 b. the terms and conditions under which purchasers are required
11 to remit payments, including, but not limited to, the date or dates
12 upon which each payment is due;
- 13 c. provisions for late payment charges and for default;
- 14 d. provisions for penalty fees for withdrawals from the fund;
- 15 e. the name and date of birth of the qualified beneficiary on whose
16 behalf the contract is drawn and the terms and conditions under which
17 another person may be substituted as the qualified beneficiary;
- 18 f. the name of any person who may cancel the contract. The terms
19 of the contract shall specify whether the contract may be canceled by
20 the purchaser, the qualified beneficiary, a specific designated person,
21 or any combination of these persons;
- 22 g. the terms and conditions under which a contract may be
23 canceled, the name of the person entitled to any refund due as a result
24 of the cancellation, and the amount of refund, if any, due to the
25 person named;
- 26 h. the time limitations, if any, within which the qualified beneficiary
27 is required to claim benefits through the program; and
- 28 i. other terms and conditions deemed by the board to be necessary
29 or proper.

30
31 13. In addition to the provisions of section 12 of this act, an
32 advance payment contract for tuition and registration fees shall
33 include, but not be limited to, the following:

- 34 a. the number of semester credit hours contracted by the purchaser;
- 35 b. whether the contracted credit hours are to be applied toward a
36 four-year public institution of higher education or a county college;
- 37 c. the assumption of a contractual obligation by the board to the
38 qualified beneficiary to provide for a specified number of semester
39 credit hours of undergraduate instruction at a public institution of
40 higher education, not to exceed the average number of credit hours
41 required for the conferral of the degree that corresponds to the plan
42 purchased on behalf of the qualified beneficiary.

43
44 14. In addition to the provisions of section 12 of this act, an
45 advance payment contract for dormitory residence shall include, but
46 not be limited to, the following:

1 a. the number of semesters of dormitory residence contracted by
2 the purchaser; and

3 b. the assumption of a contractual obligation by the board to the
4 qualified beneficiary to provide for a specified number of semesters of
5 dormitory residence at a public institution of higher education, not to
6 exceed the maximum number of semesters of full-time enrollment
7 required for the conference of a baccalaureate degree.
8

9 15. An advance payment contract may provide that a contract
10 which has not been canceled and under which benefits have not been
11 exercised within a specified period of time, shall be considered
12 terminated. Time expended by a qualified beneficiary as an active duty
13 member of any of the armed services of the United States shall be
14 added to the period of time permitted to exercise the benefits under
15 the advance payment contract. A purchaser or qualified beneficiary
16 whose advance payment contract is terminated pursuant to this section
17 shall not be entitled to a refund. The board shall retain any moneys
18 paid by the purchaser for an advance payment contract that has been
19 terminated in accordance with this section. The moneys retained by
20 the board shall be used by the board to further the purposes of this act.
21

22 16. A refund provided pursuant to of subsection g. of section 12
23 of this act, shall not exceed the amount paid into the fund by the
24 purchaser, except as provided in this section. Refunds may exceed the
25 amount paid into the fund in the following circumstances:

26 a. if the qualified beneficiary is awarded a scholarship, the terms of
27 which cover the benefits included in the advance payment contracts,
28 moneys paid for the purchase of the advance payment contracts shall
29 be returned to the purchaser in semester installments coinciding with
30 the matriculation by the qualified beneficiary in amounts of either the
31 original purchase price plus 5% compounded interest, or the current
32 rates at public institutions of higher education, whichever is less;

33 b. in the event of the death or total disability of the qualified
34 beneficiary, moneys paid for the purchase of advance payment
35 contracts shall be returned to the purchaser together with 5%
36 compounded interest, or the current rates at public institutions of
37 higher education, whichever is less; and

38 c. if an advance payment contract is converted from a university
39 plan to a county college plan, the amount refunded shall be the value
40 of the original advance payment contract minus the value of the
41 contract after the conversion.
42

43 17. A refund shall not be authorized through an advance payment
44 contract for any school year partially attended but not completed. For
45 purposes of this section, a school year partially attended but not
46 completed means any one semester whereby the student is still enrolled

1 at the conclusion of the official drop-add period, but withdraws before
2 the end of the semester. If a qualified beneficiary does not complete
3 a county college plan or university plan, as those terms are defined
4 pursuant to section 18 of this act, for reasons other than specified in
5 section 16 of this act, the purchaser shall receive a refund of the
6 amount paid into the fund for the remaining unattended years of the
7 advance payment contract pursuant to rules promulgated by the board.
8

9 18. At a minimum, the board shall make advance payment
10 contracts available for three independent plans to be known as the
11 county college plan, the university plan, and the dormitory residence
12 plan.

13 a. Through the county college plan, the advance payment contract
14 shall provide prepaid tuition and registration fees for a specified
15 number of undergraduate semester credit hours not to exceed the
16 average number of hours required for the conference of an associate
17 degree. The cost of participation in the county college plan shall be
18 based primarily on the average current and projected tuition and
19 registration fees within the county college system and the number of
20 years expected to elapse between the purchase of the plan on behalf of
21 a qualified beneficiary and the exercise of the benefits provided in the
22 plan by the qualified beneficiary. Qualified beneficiaries shall bear the
23 cost of any laboratory fees associated with enrollment in specific
24 courses. Each qualified beneficiary shall be classified as a resident for
25 tuition purposes regardless of his actual legal residence.

26 b. Through the university plan, the advance payment contract shall
27 provide prepaid tuition and registration fees for a specified number of
28 undergraduate semester credit hours not to exceed the average
29 number of hours required for the conference of a baccalaureate
30 degree. The cost of participation in the university plan shall be based
31 primarily on the current and projected tuition and registration fees of
32 the four-year public institutions of higher education and the number
33 of years expected to elapse between the purchase of the plan on
34 behalf of a qualified beneficiary and the exercise of the benefits
35 provided in the plan by the beneficiary. Qualified beneficiaries shall
36 bear the cost of any laboratory fees associated with enrollment in
37 specific courses. In the event that a qualified beneficiary fails to be
38 admitted to a four-year public institution of higher education or
39 chooses to attend a county college, the qualified beneficiary may
40 convert the average number of semester credit hours required for the
41 conference of an associate degree from a university plan to a county
42 college plan and may retain the remaining semester credit hours in the
43 university plan or may request a refund for prepaid credit hours in
44 excess of the average number of semester credit hours required for the
45 conference of an associate degree pursuant to section 16 of this act.
46 Each qualified beneficiary shall be classified as a resident for tuition

1 purposes regardless of his actual legal residence.

2 c. Through the dormitory residence plan, the advance payment
3 contract shall provide prepaid housing fees for a maximum of 10
4 semesters of full-time undergraduate enrollment in a four-year public
5 institution of higher education. Dormitory residence plans are optional
6 and may be purchased only in conjunction with a university plan.
7 Dormitory residence plans shall be purchased in increments of two
8 semesters. The cost of participation in the dormitory residence plan
9 shall be based primarily on the average current and projected housing
10 fees of four-year public institutions of higher education and the
11 number of years expected to elapse between the purchase of the plan
12 on behalf of a qualified beneficiary and the exercise of the benefits
13 provided in the plan by the qualified beneficiary. Qualified
14 beneficiaries shall bear the cost of any additional elective charges such
15 as laundry service or long-distance telephone service. Each four-year
16 public institution of higher education may specify the residence halls
17 eligible for inclusion in the plan. In addition, a four-year public
18 institution of higher education may request immediate termination of
19 a dormitory residence contract based on a violation or multiple
20 violations of rules of the residence hall. Qualified beneficiaries shall
21 have the highest priority in the assignment of housing within residence
22 halls. In the event that sufficient housing is not available for all
23 qualified beneficiaries, the board shall refund the purchaser or qualified
24 beneficiary an amount equal to the fees charged for dormitory
25 residence during that semester.

26 d. In addition to the plans required pursuant to this section, the
27 board may make advance payments contacts available for other plans,
28 such as the community college plus university plan whereby the
29 advance payment contract would provide tuition and registration fees
30 that would allow a qualified beneficiary to attend a community college
31 for an associate degree and then attend a four-year public institution
32 of higher education for a baccalaureate degree.

33 e. A qualified beneficiary may apply a county college plan,
34 university plan, or dormitory residence plan toward any eligible
35 independent institution of higher education. The board shall transfer
36 or cause to have transferred to the eligible independent institution of
37 higher education designated by the qualified beneficiary an amount not
38 to exceed the redemption value of the advance payment contract
39 within a public institution of higher education. In the event that the
40 cost of tuition and registration fees or housing fees at the
41 independent institution of higher education are less than the
42 corresponding fees at a public institution of higher education, the
43 amount transferred shall not exceed the actual cost of tuition and
44 registration fees or housing fees. A transfer authorized pursuant to
45 this subsection shall not exceed the number of semester credit hours
46 or semesters of dormitory residence contracted on behalf of a

1 qualified beneficiary.

2 f. A qualified beneficiary may apply the benefits of an advance
3 payment contract toward an eligible out-of-state public college or
4 university. An out-of-state public college or university which is not
5 for profit, is accredited by a regional accrediting association, and
6 which confers baccalaureate degrees shall be eligible for such
7 application. The board shall transfer, or cause to have transferred, an
8 amount not to exceed the redemption value of the advance payment
9 contract or the original purchase price plus 5% compounded interest,
10 whichever is less, after assessment of a reasonable transfer fee. In the
11 event that the cost of registration or housing fees charged the qualified
12 beneficiary at the eligible out-of-state college or university is less than
13 this calculated amount, the amount transferred shall not exceed the
14 actual cost of tuition and registration fees or housing fees. Any
15 remaining amount shall be transferred in subsequent semesters until
16 the transfer value is depleted. A transfer authorized pursuant to this
17 subsection shall not exceed the number of semester credit hours or
18 semesters of dormitory residence contracted on behalf of a qualified
19 beneficiary.

20

21 19. The board shall solicit proposals for the operation of the
22 program through which the board shall contract for the services of a
23 records administrator, a trustee services firm, and one or more product
24 providers.

25 a. The records administrator shall be the entity designated by the
26 board to conduct the daily operations of the program on behalf of the
27 board. The goals of the board in selecting a records administrator
28 shall be to provide purchasers with the most secure, well-diversified,
29 and beneficially administered higher education expense plan possible,
30 to allow all qualified firms interested in providing the services equal
31 consideration, and to provide the services to the State at no cost and
32 to the purchasers at the lowest cost possible. Evaluations of proposals
33 submitted pursuant to this subsection shall include, but not be limited
34 to, the following criteria:

35 (1) fees and other costs charged to purchasers that affect account
36 values or operational costs related to the program;

37 (2) past experience in records administration and current ability to
38 provide timely and accurate service in the areas of records
39 administration, audit and reconciliation, plan communication,
40 participant service, and complaint resolution;

41 (3) sufficient staff and computer capability for the scope and level
42 of service expected by the board; and

43 (4) financial history and current financial strength and capital
44 adequacy to provide administrative services required by the board.

45 b. The trustee services firm shall be the entity designated by the
46 board to select and supervise investment programs on behalf of the

1 board. The goals of the board in selecting a trustee services firm shall
2 be to obtain the highest standards of professional trustee services, to
3 allow all qualified firms interested in providing services equal
4 consideration, and to provide services to the State at no cost and to
5 the purchasers at the lowest cost possible. The trustee services firm
6 shall agree to meet the obligations of the board to qualified
7 beneficiaries if moneys in the fund fail to offset the obligations of the
8 board as a result of imprudent selection or supervision of investment
9 programs by the firm. Evaluations of proposals submitted pursuant
10 to this subsection shall include, but not be limited to the following
11 criteria:

12 (1) adequacy of trustee services for supervision and management
13 of the program, including current operations and staff organization and
14 commitment of management to the proposal;

15 (2) capability to execute program responsibilities within time and
16 regulatory constraints;

17 (3) past experience in trustee services and current ability to
18 maintain regular and continuous interactions with the board, records
19 administrator, and product provider;

20 (4) the minimum purchaser participation assumed within the
21 proposal and any additional requirements of purchasers;

22 (5) adequacy of technical assistance and services proposed for
23 staff;

24 (6) adequacy of a management system for evaluating and
25 improving overall trustee services to the program;

26 (7) adequacy of facilities, equipment, and electronic data
27 processing services; and

28 (8) detailed projections of administrative costs, including the
29 amount and type of insurance coverage, and detailed projections of
30 total costs.

31
32 20. Moneys paid into or out of the fund by or on behalf of a
33 purchaser or qualified beneficiary of an advance payment contract
34 made under this act, which contract has not been terminated or
35 canceled, are exempt for all claims of creditors of the purchaser or the
36 beneficiary.

37
38 21. The State or any State agency, county, municipality, or other
39 political subdivision may, by contract or collective bargaining
40 agreement, agree with any employee to remit payments toward
41 advance payment contracts through payroll deductions made by the
42 appropriate officer or officers of the State, State agency, county,
43 municipality, or political subdivision. The payments shall be held and
44 administered in accordance with this act.

45
46 22. Nothing in this act shall be construed as a promise or guarantee

1 that a qualified beneficiary shall be admitted to a public institution of
2 higher education or to a particular public institution of higher
3 education, shall be allowed to continue enrollment at a public
4 institution of higher education after admission, or shall be graduated
5 from a public institution of higher education.

6
7 23. The State shall agree to meet the obligations of the board to
8 qualified beneficiaries, if moneys in the fund fail to offset the
9 obligations of the board. The Legislature shall appropriate to the
10 Prepaid Higher Education Expense Trust Fund the amount necessary
11 to meet the obligations of the board to qualified beneficiaries.

12
13 24. In the event that the State Treasurer determines the program
14 to be financially infeasible, the State may discontinue the provision of
15 the program. A qualified beneficiary who has been accepted by and is
16 enrolled or is within five years of enrollment in an independent
17 institution of higher education or public institution of higher
18 education shall be entitled to exercise the benefits for which he has
19 contracted. All other contract holders shall receive a refund of the
20 amount paid into the fund, plus interest at the prevailing rate.

21
22 25. This act shall take effect immediately.

23
24
25 STATEMENT

26
27 This bill is entitled the "New Jersey Prepaid Higher Education
28 Expense Program Act of 2000." It establishes the New Jersey Prepaid
29 Higher Education Expense Program, to provide a mechanism through
30 which the cost of tuition, registration fees, and dormitory residence
31 may be paid in advance of enrollment in a public institution of higher
32 education at a rate lower than the cost at the time of actual enrollment.

33 The bill provides for the creation of the Prepaid Higher Education
34 Expense Board, in but not of, the Department of the Treasury. The
35 board will consist of the Treasurer, the chairman of the Commission
36 on Higher Education, or their designees, and five members appointed
37 by the Governor who will possess knowledge, skill and experience in
38 the areas of accounting, actuary, risk management, or investment
39 management. The board will be responsible for administering the New
40 Jersey Prepaid Higher Education Expense Program.

41 The board, pursuant to the bill, will develop two types of advance
42 payment contracts, one for tuition and registration fees and the other
43 for dormitory residence. The bill sets forth provisions that must be
44 included in both types of advance payment contracts. These
45 provisions include:

- 46 - the amount of the payment and the number of payments required;

- 1 - the terms and conditions under which a purchaser will remit
- 2 payments, including, but not limited to, the dates upon which each
- 3 payment will be due;
- 4 - provisions for late payment charges and for default;
- 5 - provisions for penalty fees for withdrawals from the fund;
- 6 - the name and date of birth of the qualified beneficiary on whose
- 7 behalf the contract is drawn and the terms and conditions under which
- 8 another person may be substituted as the qualified beneficiary;
- 9 - the name of any person who may cancel the contract;
- 10 - the terms and conditions under which a contract may be canceled,
- 11 the name of the person entitled to any refund due as a result of the
- 12 cancellation, and the amount of refund, if any, due to the person
- 13 named;
- 14 - the time limitations, if any, within which the qualified beneficiary
- 15 must claim benefits through the program; and
- 16 - other terms and conditions deemed by the board to be necessary
- 17 or proper.

18 In addition to these general provisions, the bill also requires that
19 each type of advance payment contract include specific provisions.
20 The advance payment contract for tuition and registration fees, for
21 example, will have to include the number of semester credit hours
22 contracted by the purchaser and whether the credit hours will be
23 applied toward a four- year public institution of higher education or a
24 county college. This type of advance payment contract will also
25 include a provision obligating the board to provide to the qualified
26 beneficiary the specified number of semester credit hours, not to
27 exceed the average number of credit hours required for the conference
28 of the degree that corresponds to the plan purchased on behalf of the
29 qualified beneficiary.

30 An advance payment contract for dormitory residence will have to
31 include the number of semesters of dormitory residence contracted by
32 the purchaser. This advance payment contract, similar to the advance
33 payment contract for tuition and registration fees, will have to include
34 a provision obligating the board to provide to a qualified beneficiary
35 the specified number of semesters of dormitory residence, not to
36 exceed the maximum number of semesters of full-time enrollment
37 required for the conference of a baccalaureate degree.

38 Under the bill, the board will be required to make advance payment
39 contracts available for three independent plans, to be known as the
40 county college plan, the university plan, and the dormitory residence
41 plan. Through a county college plan, the advance payment contract
42 will provide prepaid tuition and registration fees for a specified
43 number of undergraduate semester credit hours not to exceed the
44 average number of hours required for the conference of an associate
45 degree. Through a university plan, the advance payment contract will
46 provide prepaid tuition and registration fees for a specified number of

1 undergraduate semester credit hours not to exceed the average
2 number of hours required for the conference of a baccalaureate
3 degree. The cost of participating in each of these plans will be based
4 primarily on the average current and projected tuition and registration
5 fees within the county college system or the four-year public
6 institutions of higher education, respectively, and the number of years
7 expected to elapse between the purchase of the plan and the exercise
8 of the benefits by the qualified beneficiary.

9 Through the dormitory plans, the advance payment contract will
10 provide prepaid housing fees for a maximum of 10 semesters of full-
11 time undergraduate enrollment in a four-year public institution of
12 higher education. These plans are optional, and may be purchased
13 only in conjunction with a university plan. As with the university plan,
14 costs of participation will be based primarily on the average current
15 and projected housing fees within the four-year public institutions of
16 higher education and the number of years expected to elapse between
17 the purchase of the plan and the exercise of the benefits by the
18 qualified beneficiary.

19 The bill permits any of these plans to be applied toward any
20 independent institution of higher education located within the State.
21 Under these circumstances, the board will transfer to these institutions
22 an amount not to exceed the redemption value of the advance payment
23 contract within a public institution of higher education. If the costs at
24 the independent institution of higher education is less than the
25 corresponding costs at a public institution of higher education, then
26 the amount transferred may not exceed the actual cost of tuition and
27 registration fees or housing fees.

28 The bill also permits the benefits of an advance payment contract to
29 be applied toward an out-of-state public college or university. To be
30 eligible, these institutions must be not for profit, accredited by a
31 regional accrediting association and confer baccalaureate degrees.
32 Under these circumstances, the board will transfer to these institutions
33 an amount not to exceed the redemption value of the advance payment
34 contract or the original purchase price plus 5% compounded interest,
35 whichever is less, after assessment of a reasonable transfer fees. If the
36 costs at the out-of-state public college or university are less than the
37 calculated amount, then the amount transferred may not exceed the
38 actual cost of tuition and registration fees or housing fees.

39 The bill states that it should not be construed as providing or
40 guaranteeing that a qualified beneficiary of an advance payment
41 contract will be admitted to a public institution of higher education or
42 to a particular one of these institutions, will be allowed to continue
43 enrollment at one of these institutions after admission or will be
44 graduated from one of these institutions.

45 The bill guarantees that in the event that moneys in the fund are
46 insufficient to offset the obligations of the board, then the State will

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17

1 meet those obligations. In addition, the bill provides that if the State
2 Treasurer determines that the program is financially infeasible, the
3 State may discontinue the program. In this case a qualified
4 beneficiary who has been accepted by and is enrolled or is within five
5 years of enrollment in an independent institution of higher education
6 or public institution of higher education will be entitled to exercise the
7 benefits for which he has contracted. Other contract holders will
8 receive a refund of the amount paid into the fund plus interest at the
9 prevailing rate.

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 1622 and 2296

STATE OF NEW JERSEY
209th LEGISLATURE

ADOPTED DECEMBER 7, 2000

Sponsored by:

Assemblyman KEVIN J. O'TOOLE

District 21 (Essex and Union)

Assemblyman FRANCIS J. BLEE

District 2 (Atlantic)

Assemblyman DAVID W. WOLFE

District 10 (Monmouth and Ocean)

Assemblyman ANTHONY IMPREVEDUTO

District 32 (Bergen and Hudson)

Co-Sponsored by:

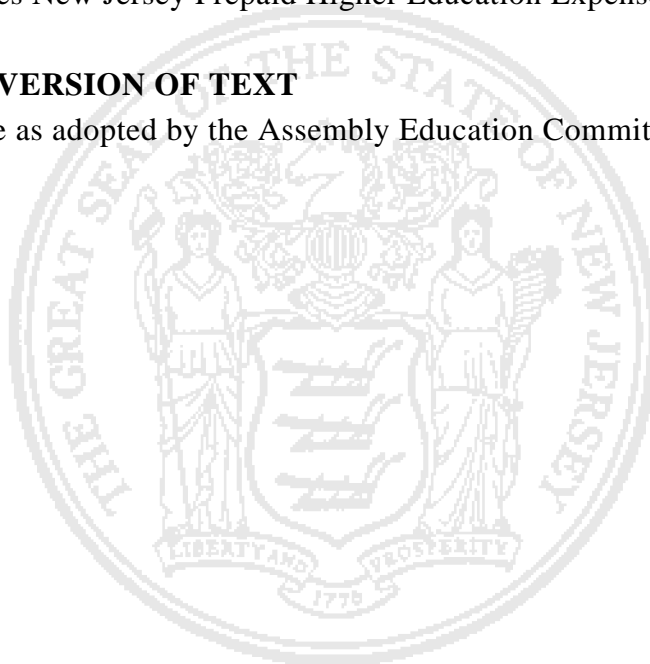
**Assemblymen Garcia, Gusciora, Assemblywoman Greenstein,
Assemblymen Steele, Stanley, Zecker and Arnone**

SYNOPSIS

Establishes New Jersey Prepaid Higher Education Expense Program.

CURRENT VERSION OF TEXT

Substitute as adopted by the Assembly Education Committee.



(Sponsorship Updated As Of: 1/30/2001)

1 **AN ACT** establishing a Prepaid Higher Education Expense Program,
2 amending and supplementing Title 18A of the New Jersey Statutes
3 and making an appropriation.

4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7

8 1. (New section) Sections 1 through 16 of this act shall be known
9 and may be cited as the "New Jersey Prepaid Higher Education
10 Expense Program Act of 2000."

11

12 2. (New section) The Legislature finds and declares: that
13 educational opportunity at the college and university level is a critical
14 State interest which is linked to the needs of the State to ensure a
15 well-educated work force; that educational opportunity is best ensured
16 through the provision of institutions of higher education which are
17 geographically and financially accessible; that it is in the best interests
18 of this State to adopt and foster mechanisms which will encourage its
19 citizens to engage in the timely financial planning which is necessary
20 to guarantee that students will have the financial resources necessary
21 to pursue a higher education given the annually escalating level of
22 resources which such attendance requires; and that one such
23 mechanism which has proven successful in some other states is the
24 establishment of a program through which many of the costs
25 associated with attendance at institutions of higher education may be
26 paid in advance and fixed at a guaranteed level for the duration of
27 undergraduate enrollment.

28

29 3. (New section) As used in sections 1 through 16 of this act:

30 "Advance payment contract" means a contract entered into by the
31 board and a purchaser pursuant to the provisions of this act;

32 "Board" means the Prepaid Higher Education Expense Board
33 established pursuant to section 6 of this act;

34 "Eligible independent institution of higher education" means those
35 institutions of higher education incorporated and located in this State,
36 which, by virtue of law or character or license, are nonprofit
37 educational institutions empowered to grant academic degrees and
38 which provide a level of education which is equivalent to the education
39 provided by the State's public institutions of higher education as
40 attested by the receipt of and continuation of regional accreditation by
41 the Middle States Association of Colleges and Schools, and which are
42 eligible to receive State aid under the provisions of the Constitution of
43 the United States and the Constitution of the State of New Jersey and

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 whose students are eligible to receive benefits under section 529 of the
2 federal Internal Revenue Code of 1986, 26 U.S.C. s.529. "Eligible
3 independent institution of higher education" does not include any
4 educational institution dedicated primarily to the preparation or
5 training of ministers, priests, rabbis, or other professional persons in
6 the field of religion;

7 "Fund" means the Prepaid Higher Education Expense Trust Fund
8 established pursuant to section 5 of this act;

9 "Institution of higher education" means an eligible educational
10 institution as defined in or for purposes of section 529 of the federal
11 Internal Revenue Code of 1986, 26 U.S.C.s.529. "Institution of higher
12 education" shall include a proprietary institution if expenses for tuition
13 at the institution would be considered qualified higher education
14 expenses under section 529 of the federal Internal Revenue Code of
15 1986, 26 U.S.C.s.529, but only for degree granting programs licensed
16 or approved by the Commission on Higher Education or for other
17 proprietary institutions as determined by the board;

18 "Program" means the New Jersey Prepaid Higher Education
19 Expense Program established pursuant to section 4 of this act;

20 "Public institution of higher education" means Rutgers, The State
21 University, the State colleges or universities established pursuant to
22 chapter 64 of Title 18A of the New Jersey Statutes, the New Jersey
23 Institute of Technology, the University of Medicine and Dentistry of
24 New Jersey, the county colleges and any other public university or
25 college now or hereafter established or authorized by State law. A
26 public institution of higher education is an institution whose students
27 are eligible to receive benefits under section 529 of the federal Internal
28 Revenue Code of 1986, 26 U.S.C. s.529;

29 "Purchaser" means a person who makes or is obligated to make
30 payments in accordance with an advance payment contract;

31 "Qualified beneficiary" means: a. a resident of this State at the
32 time a purchaser enters into an advance payment contract on behalf of
33 the resident; or b. a nonresident who is the child of a noncustodial
34 parent who is a resident of the State at the time that the noncustodial
35 parent enters into an advance payment contract on behalf of the child;

36 "Tuition" means the charges imposed by an institution of higher
37 education for enrollment at the institution.

38

39 4. (New section) a. There is established the New Jersey Prepaid
40 Higher Education Expense Program to provide a means for payment
41 of the costs of tuition in advance of enrollment at an institution of
42 higher education. Moneys remitted in accordance with advance
43 payment contracts shall be combined and invested in a manner that
44 yields, at a minimum, sufficient interest to generate the difference
45 between the prepaid amount and the average in-state tuition costs at
46 public institutions of higher education in the State at the time that the

1 benefits are exercised.

2 b. The program shall be administered by the Prepaid Higher
3 Education Expense Board established pursuant to section 6 of this act.

4

5 5. (New section) a. There is created within the Prepaid Higher
6 Education Expense Board the Prepaid Higher Education Expense
7 Trust Fund. The fund shall consist of State appropriations, moneys
8 acquired from other governmental or private sources, and moneys
9 remitted in accordance with advance payment contracts. Dividends,
10 interest, and gains accruing to the fund shall increase the total funds
11 available for the program.

12 b. Any funds associated with contracts for which refunds are due,
13 but have not been claimed, shall increase the total funds available for
14 the program. However, the board shall establish procedures for
15 notifying purchasers of any unclaimed refund and shall establish a time
16 period after which a refund may not be claimed.

17 c. Any balance contained in the fund at the end of a fiscal year
18 shall remain therein and shall be available for carrying out the purposes
19 of the program.

20 d. The assets of the fund shall be maintained, invested, and
21 expended solely for the purposes of this act and shall not be loaned,
22 transferred, or otherwise used by the State for any purpose other than
23 the purposes of this act. This subsection shall not be construed to
24 prohibit the board from investing in, by purchase or otherwise, bonds,
25 notes or other obligations of the State or an agency or instrumentality
26 of the State.

27 e. Unless otherwise specified by the board, assets of the fund shall
28 be expended in the following order of priority:

29 (1) to make payments to institutions of higher education on behalf
30 of qualified beneficiaries;

31 (2) to make refunds upon cancellation of advance payment
32 contracts; and

33 (3) to pay the costs of program administration and operations.

34 f. The board shall administer the fund in a manner that is
35 sufficiently actuarially sound to defray the obligations of the program.
36 The board shall annually evaluate or cause to be evaluated the
37 actuarial soundness of the fund. If the board determines a need for
38 additional assets in order to preserve actuarial soundness, the board
39 may adjust the terms of subsequent advance payment contracts to
40 ensure soundness.

41 g. If the board finds that a surplus in the fund exists, the board
42 may compensate purchasers of advance payment contracts in a manner
43 that the board determines to be appropriate.

44

45 6. (New section) a. The Prepaid Higher Education Expense
46 Board is established as a body corporate and politic in the Executive

1 Branch of State Government and for the purposes of complying with
2 the provisions of Article V, Section IV, paragraph 1 of the New Jersey
3 Constitution, the board is allocated in but not of the Department of
4 State. Notwithstanding this allocation, the board shall be independent
5 of any supervision or control by the department or by any board or
6 officer thereof.

7 b. The board shall consist of 11 members, including the State
8 Treasurer or a designee, the executive director of the Commission on
9 Higher Education or a designee, the executive director of the Higher
10 Education Student Assistance Authority or a designee, the chair of
11 the New Jersey Presidents' Council or a designee; and seven members
12 appointed by the Governor without regard for political affiliation, one
13 upon the recommendation of the Speaker of the General Assembly,
14 one upon the recommendation of the Minority Leader of the General
15 Assembly, one upon the recommendation of the President of the
16 Senate, and one upon the recommendation of the Minority Leader of
17 the Senate. Each member appointed by the Governor shall possess
18 knowledge, skill, and experience in the areas of accounting, actuary,
19 risk management or investment management. Members appointed by
20 the Governor shall serve terms of three years, except that in making
21 the initial appointments, the Governor shall appoint two members to
22 serve for one year, two members to serve for two years, and three
23 members to serve for three years. Any member appointed to fill a
24 vacancy on the board shall be appointed in a like manner and shall
25 serve until a successor qualifies. Members of the board shall serve
26 without compensation but shall be reimbursed for any necessary
27 expenses incurred in the performance of their duties.

28 c. The Governor shall appoint a member of the board to serve as
29 the initial chair of the board. Thereafter, the board shall elect a chair
30 annually. The board shall annually elect a board member to serve as
31 vice-chair and shall designate a secretary-treasurer who need not be a
32 member of the board. The secretary-treasurer shall keep a record of
33 the proceedings of the board and shall be the custodian of all printed
34 material filed with or by the board and of its official seal.
35 Notwithstanding the existence of vacancies on the board, a majority of
36 the members shall constitute a quorum. The board shall take no
37 official action in the absence of a quorum. The board shall meet, at a
38 minimum, on a quarterly basis at the call of the chair.

39 d. Neither the members of the board, nor any officer or employee
40 of the board shall be liable personally for the debts, liabilities or
41 obligations of the program established pursuant to this act.

42

43 7. (New section) The board shall have the powers necessary or
44 proper to carry out the provisions of this act, including, but not limited
45 to, the power to:

- 1 a. appoint an executive director to serve as the chief administrative
2 and operational officer of the board and to perform other duties
3 assigned by the board;
- 4 b. adopt an official seal and alter the same at pleasure;
- 5 c. sue and be sued in its own name;
- 6 d. make and enter into all contracts and agreements necessary or
7 incidental to the performance of its duties and the execution of its
8 powers in accordance with the provisions of P.L.1954, c.48 (C.52:34-
9 6 et seq.);
- 10 e. purchase, without advertising for bids or after having rejected
11 all bids obtained pursuant to advertising therefor, any materials,
12 supplies, goods, services or equipment pursuant to a contract or
13 contracts for such materials, supplies, goods, services or equipment
14 entered into on behalf of the State by the Division of Purchase and
15 Property;
- 16 f. establish agreements or other transactions with federal, State,
17 and local agencies, including institutions of higher education;
- 18 g. invest funds not required for immediate disbursement;
- 19 h. hold, buy, and sell any instruments, obligations, securities, and
20 property determined appropriate by the board;
- 21 i. employ personnel, including financial and computer experts,
22 legal counsel, accountants, managers and auditors, as may be
23 necessary; to fix their compensation; and to promote and discharge the
24 employees and agents; all without regard to the provisions of Title
25 11A of the New Jersey Statutes;
- 26 j. solicit and accept gifts, grants, loans, and other aids from any
27 source or participate in any other way in any government program to
28 carry out the purposes of this act;
- 29 k. require a reasonable length of State residence for qualified
30 beneficiaries, as appropriate;
- 31 l. reasonably restrict the number of participants in the county
32 college plan and the university plan according to criteria developed by
33 the board. A person denied participation solely on the basis of this
34 restriction shall be granted priority for participation during the
35 succeeding year;
- 36 m. segregate contributions and payments to the fund into various
37 accounts;
- 38 n. require and collect administrative fees in connection with any
39 transaction and impose reasonable penalties, including default, for
40 delinquent payments or for entering into an advance payment contract
41 on a fraudulent basis;
- 42 o. procure insurance against any loss in connection with the
43 property, assets and activities of the fund or the board;
- 44 p. provide for the receipt of contributions in lump sums or
45 installment payments;

- 1 q. impose reasonable time limits on use of the tuition benefits
2 provided by the program;
- 3 r. delineate the terms under which payments may be withdrawn
4 from the fund and impose reasonable fees and charges for withdrawals;
- 5 s. define for the purposes of this act the average number of hours
6 required for the conferral of an associate degree; the average number
7 of hours required for the conferral of a baccalaureate degree; the
8 average current and projected tuition within the county college system
9 and the average current and projected tuition of the four-year public
10 institutions of higher education;
- 11 t. determine whether the New Jersey Better Educational Savings
12 Trust (NJBEST) Program established pursuant to N.J.S.18A:71B-35
13 through N.J.S.18A:71B-46 and the New Jersey Prepaid Higher
14 Education Expense Program should be marketed by a single private
15 entity and whether a single private entity should manage both
16 programs on behalf of the board;
- 17 u. adopt rules and regulations to implement this act; and
- 18 v. take all actions required so that the program is treated as a
19 qualified State tuition program under section 529 of the federal
20 Internal Revenue Code of 1986, 26 U.S.C.s.529.
- 21
- 22 8. (New section) a. The board, acting with the approval of the
23 State Investment Council in the Division of Investment, shall establish
24 a comprehensive investment plan for the purposes of this act and
25 annually review the plan to assure that the program remains actuarially
26 sound. The comprehensive investment plan shall specify the
27 investment policies to be utilized by the board in its administration of
28 the fund. The board may place assets of the fund in savings accounts
29 or use the funds to purchase fixed or variable life insurance or annuity
30 contracts, securities, evidence of indebtedness or other investment
31 products, pursuant to the comprehensive investment plan and in such
32 proportions as may be designated or approved under that plan. The
33 board shall be subject to the "prudent person" standard of care
34 applicable to the Division of Investment in the Department of the
35 Treasury pursuant to subsection b. of section 11 of P.L.1950, c.270
36 (C.52:18A-89). The insurance, annuity, savings or investment
37 products shall be underwritten and offered in compliance with the
38 applicable federal and State laws and regulations and by persons who
39 are duly authorized by applicable federal and State authorities.
- 40 b. The board may delegate responsibility for administration of the
41 comprehensive investment plan required pursuant to subsection a. of
42 this section to a person the board determines to be qualified. Directly
43 or through the person, the board may contract, in accordance with the
44 provisions of P.L.1954, c.48 (C.52:34-6 et seq.), with a private
45 corporation or institution to provide such services as may be a part of
46 the comprehensive investment plan or as may be deemed necessary for

1 implementation of the comprehensive investment plan, including, but
2 not limited to, providing consolidated billing, individual and collective
3 record keeping and accounting, and asset purchase, control and
4 safekeeping.

5 c. The board shall annually prepare or cause to be prepared a
6 report setting forth in appropriate detail an accounting of the fund and
7 a description of the financial condition of the program at the close of
8 each fiscal year. The report shall be submitted to the Governor, the
9 President of the Senate, the Speaker of the General Assembly, the
10 State Treasurer, the executive director of the New Jersey Commission
11 on Higher Education and the executive director of the Higher
12 Education Student Assistance Authority on or before August 1 each
13 year. In addition, the board shall make the report available to
14 purchasers of advance payment contracts. The board shall provide to
15 the Commission on Higher Education by August 1 each year complete
16 advance payment contract sales information, including projected
17 higher education enrollments of qualified beneficiaries.

18 d. The accounts of the funds shall be subject to annual audits by
19 the State Auditor or a designee. In addition, the board shall
20 commission an annual independent audit of the program. The results
21 of the independent audit shall be provided to the Governor, the
22 President of the Senate, the Speaker of the General Assembly, the
23 State Treasurer, the executive director of the New Jersey Commission
24 on Higher Education and the executive director of the Higher
25 Education Student Assistance Authority. If the board delegates
26 responsibility for the administration of the comprehensive investment
27 plan pursuant to subsection b. of this section, the cost of the
28 independent audit shall be borne by that person.

29 e. The board may make available insurance coverage written
30 exclusively for the purpose of protecting advance payment contracts,
31 and the purchasers or beneficiaries thereof, which may be issued in the
32 form of a group term life policy to purchasers of advance payment
33 contracts.

34 f. The board may solicit proposals for the marketing of the
35 program or may delegate this responsibility to the person who is
36 administering the comprehensive investment plan pursuant to
37 subsection b. of this section. The entity designated pursuant to this
38 subsection shall serve as a centralized marketing agent for the program
39 and shall be solely responsible for the marketing of the program.
40 Materials produced for the purpose of marketing the program shall be
41 submitted to the board for review and approval. Marketing materials
42 shall not be made available or distributed to the public prior to the
43 materials being approved by the board. An institution of higher
44 education may distribute marketing materials produced for the
45 program. The State and the board shall not be liable for
46 misrepresentation of the program by a marketing agent.

1 A single entity may be selected to market both the New Jersey
2 Prepaid Higher Education Expense Program and the New Jersey
3 Better Educational Savings Trust (NJBEST) Program established
4 pursuant to N.J.S.18A:71B-35 through N.J.S.18A:71B-46.

5 Nothing in this subsection shall preclude the person who is
6 administering the comprehensive investment plan pursuant to
7 subsection b. of this section from marketing both the New Jersey
8 Prepaid Higher Education Expense Program and the New Jersey
9 Better Educational Savings Trust (NJBEST) Program established
10 pursuant to N.J.S.18A:71B-35 through N.J.S.18A:71B-46.

11 g. Statements, reports on distributions and information returns
12 relating to accounts shall be prepared, distributed, and filed to the
13 extent required by section 529 of the federal Internal Revenue Code
14 of 1986, 26 U.S.C. s.529.

15
16 9. (New section) a. The board shall develop an advance payment
17 contract with the assistance of the Office of the Attorney General. An
18 advance payment contract shall be exempt from the provisions of
19 Subtitle 3 of Title 17 of the Revised Statutes and Subtitle 3 of Title
20 17B of the New Jersey Statutes. The contents of the contract shall
21 include, but not be limited to, the following:

22 (1) the amount of the payments and the number of payments
23 required from a purchaser;

24 (2) the terms and conditions under which purchasers are required
25 to remit payments, including, but not limited to, the date or dates upon
26 which each payment is due;

27 (3) provisions for late payment charges and for default;

28 (4) provisions for penalty fees for withdrawals from the fund;

29 (5) the name and date of birth of the qualified beneficiary on
30 whose behalf the contract is drawn and the terms and conditions under
31 which another person may be substituted as the qualified beneficiary;

32 (6) the name of any person who may cancel the contract. The
33 terms of the contract shall specify whether the contract may be
34 canceled by the purchaser, the qualified beneficiary, a specific
35 designated person or any combination of these persons;

36 (7) the terms and conditions under which a contract may be
37 canceled, the name of the person entitled to any refund due as a result
38 of the cancellation of the contract pursuant to those terms and
39 conditions, and the method for determining the amount of refund;

40 (8) the time limitations, if any, within which the qualified
41 beneficiary is required to claim benefits through the program. If time
42 limitations are included in the contract, the time expended by a
43 qualified beneficiary as an active duty member of any of the armed
44 services of the United States shall be added to the period of time
45 permitted to exercise the benefits; and

1 (9) other terms and conditions deemed by the board to be
2 necessary or proper.

3 b. In addition to the provisions of subsection a. of this section an
4 advance payment contract shall include the following:

5 (1) the number of credit hours contracted by the purchaser;

6 (2) the plan toward which the credit hours shall be applied;

7 (3) the assumption of a contractual obligation by the board to the
8 qualified beneficiary to provide for a specified number of credit hours
9 of undergraduate instruction at a public institution of higher education,
10 not to exceed the average number of credit hours required for the
11 conferral of the degree that corresponds to the plan purchased on
12 behalf of the qualified beneficiary.

13

14 10. (New section) a. At a minimum, the board shall make
15 advance payment contracts available for two independent plans to be
16 known as the county college plan and the university plan.

17 (1) Through the county college plan, the advance payment
18 contract shall provide prepaid tuition for a specified number of
19 undergraduate credit hours not to exceed the average number of hours
20 required for the conferral of an associate degree. The cost of
21 participation in the county college plan shall be based primarily on the
22 average current and projected tuition within the county college system
23 and the number of years expected to elapse between the purchase of
24 the plan on behalf of a qualified beneficiary and the exercise of the
25 benefits provided in the plan by the qualified beneficiary. Qualified
26 beneficiaries shall bear the cost of any laboratory fees associated with
27 enrollment in specific courses. Each qualified beneficiary shall be
28 classified as a resident for tuition purposes regardless of his actual
29 legal residence.

30 (2) Through the university plan, the advance payment contract
31 shall provide prepaid tuition for a specified number of undergraduate
32 credit hours not to exceed the average number of hours required for
33 the conferral of a baccalaureate degree. The cost of participation in
34 the university plan shall be based primarily on the average current and
35 projected tuition of the four-year public institutions of higher
36 education and the number of years expected to elapse between the
37 purchase of the plan on behalf of a qualified beneficiary and the
38 exercise of the benefits provided in the plan by the beneficiary.
39 Qualified beneficiaries shall bear the cost of any laboratory fees
40 associated with enrollment in specific courses. In the event that a
41 qualified beneficiary fails to be admitted to a four-year public
42 institution of higher education or chooses to attend a county college,
43 the qualified beneficiary may convert the average number of credit
44 hours required for the conferral of an associate degree from a
45 university plan to a county college plan and may retain the remaining
46 credit hours in the university plan or may request a refund for prepaid

1 credit hours in excess of the average number of credit hours required
2 for the conferral of an associate degree. Each qualified beneficiary
3 shall be classified as a resident for tuition purposes regardless of his
4 actual legal residence.

5 b. In addition to the plans required pursuant to subsection a. of
6 this section, the board may make advance payment contracts available
7 for other plans, such as the county college plus university plan
8 whereby the advance payment contract would provide tuition that
9 would allow a qualified beneficiary to attend a county college for an
10 associate degree and then attend a four-year public institution of
11 higher education for a baccalaureate degree.

12 c. The board shall establish procedures for conversions between
13 plans established under the program. The procedures shall include, but
14 not be limited to, the conditions under which a conversion may occur
15 and the method for calculating any refund due.

16 d. A qualified beneficiary may apply a county college plan or a
17 university plan toward any eligible independent institution of higher
18 education. The board shall transfer or cause to have transferred to the
19 eligible independent institution of higher education designated by the
20 qualified beneficiary an amount not to exceed the weighted average
21 tuition purchased under the advance payment contract. In the event
22 that the cost of tuition at the eligible independent institution of higher
23 education is less than the weighted average tuition purchased under
24 the advance payment contract, the amount transferred shall not exceed
25 the actual cost of tuition. A transfer authorized pursuant to this
26 subsection shall not exceed the number of credit hours contracted on
27 behalf of a qualified beneficiary.

28 e. A qualified beneficiary may apply the benefits of an advance
29 payment contract toward an eligible out-of-state institution of higher
30 education. Institutional eligibility for out-of-state institutions of
31 higher education shall be determined by the board, but in making
32 those determinations the board shall recognize that the benefits may
33 only be used at an out-of-state institution of higher education whose
34 students are eligible to receive benefits under section 529 of the
35 federal Internal Revenue Code of 1986, 26 U.S.C. s.529. The board
36 shall transfer or cause to have transferred to the eligible out-of-state
37 institution of higher education designated by the qualified beneficiary
38 an amount not to exceed the weighted average tuition purchased under
39 the advance payment contract. In the event that the cost of tuition at
40 the eligible out-of-state institution of higher education is less than the
41 weighted average tuition purchased under the advance payment
42 contract, the amount transferred shall not exceed the actual cost of
43 tuition. A transfer authorized pursuant to this subsection shall not
44 exceed the number of credit hours contracted on behalf of a qualified
45 beneficiary.

1 11. (New section) a. The board shall determine the conditions
2 under which refunds are payable under the program. Unless
3 authorized by the board or under the provisions of this section, a
4 refund shall not exceed the amount paid into the fund by the
5 purchaser. A refund may exceed the amount paid into the fund in the
6 following circumstances:

7 (1) if the qualified beneficiary is awarded a scholarship (or
8 allowance or payment described in subparagraph (B) or (C) of
9 paragraph (1) of subsection (d) of section 135 of the federal Internal
10 Revenue Code of 1986, 26 U.S.C. s.135), the terms of which cover
11 the benefits included in the advance payment contracts, moneys paid
12 for the purchase of the advance payment contracts shall be returned to
13 the purchaser in enrollment period installments coinciding with the
14 matriculation by the qualified beneficiary in amounts equal to the lesser
15 of the original purchase price plus 5% interest compounded annually,
16 or the weighted average tuition purchased under the advance payment
17 contract; and

18 (2) in the event of the death or disability of the qualified
19 beneficiary, moneys paid for the purchase of advance payment
20 contracts shall be returned to the purchaser together with 5% interest
21 compounded annually.

22 b. A refund shall not be authorized through an advance payment
23 contract for any school year partially attended but not completed. For
24 purposes of this subsection, a school year partially attended but not
25 completed means any one enrollment period whereby the student is
26 still enrolled at the conclusion of the official drop-add period, but
27 withdraws before the end of the enrollment period.

28 c. If a qualified beneficiary does not complete a county college
29 plan or university plan, for reasons other than specified in subsection
30 a. of this section, the purchaser shall receive a refund of the amount
31 paid into the fund for the remaining unattended years of the advance
32 payment contract pursuant to rules promulgated by the board and in
33 accordance with the provisions of section 529 of the federal Internal
34 Revenue Code of 1986, 26 U.S.C. s.529.

35
36 12. (New section) Moneys paid into or out of the fund by or on
37 behalf of a purchaser or qualified beneficiary of an advance payment
38 contract for the purposes of financing the cost of qualified higher
39 education expenses under the program are exempt from all claims of
40 creditors of the purchaser or the beneficiary.

41
42 13. (New section) The State or any State agency, county,
43 municipality, or other political subdivision may, by contract or
44 collective bargaining agreement, agree with any employee to remit
45 payments toward advance payment contracts through payroll
46 deductions made by the appropriate officer or officers of the State,

1 State agency, county, municipality, or political subdivision. The
2 payments shall be held and administered in accordance with this act.

3
4 14. (New section) In order to meet the obligations of the board
5 under this act, there shall be paid to the board for deposit in the fund,
6 at the time of distribution, subject to appropriation, such sum, if any,
7 as shall be certified by the chair of the board as necessary to provide
8 that amount at the time of distribution. The chair shall make and
9 deliver to the Governor, or his designee, the certificate stating the
10 sums, if any, required to make available in the fund the amount
11 aforesaid, and the sums so certified shall be appropriated and paid to
12 the board during the then current State fiscal year.

13
14 15. (New section) In the event that the State Treasurer
15 determines the program to be financially infeasible, the State may
16 discontinue the provision of the program. A qualified beneficiary who
17 has been accepted by and is enrolled or is within five years of
18 enrollment in an institution of higher education shall be entitled to
19 exercise the benefits for which he has contracted. All other contract
20 holders shall receive a refund of the amount paid into the fund, plus
21 interest at the prevailing rate.

22
23 16. (New section) a. A qualified beneficiary who graduates from
24 high school with a 3.0 cumulative grade point average on a 4.0 scale
25 in an academic program or a 3.2 cumulative grade point average on a
26 4.0 scale in a vocational-educational program, based upon grades in
27 core curriculum content subject areas as determined by the board, or
28 who graduates in the top 15% of his high school graduating class shall
29 be admitted to a public institution of higher education. In order to be
30 admitted to a public institution of higher education pursuant to this
31 section, the qualified beneficiary shall meet all of the institution's
32 requirements for admittance. This provision shall not be construed to
33 promise or guarantee that a qualified beneficiary shall be admitted to
34 a particular public institution of higher education.

35 b. In order to effectuate the provisions of subsection a. of this
36 section, the board, in consultation with the Commission on Higher
37 Education, shall develop a process to assist qualified beneficiaries in
38 applying to all public institutions of higher education.

39
40 17. (New section) Moneys paid into or out of an account by or
41 on behalf of a contributor or designated beneficiary for the purposes
42 of financing the cost of qualified higher education expenses under the
43 New Jersey Better Educational Savings Trust (NJBEST) Program, are
44 exempt from all claims of creditors of the contributor or the
45 designated beneficiary.

1 18. N.J.S.18A:71B-36 is amended to read as follows:

2 18A:71B-36. As used in this article:

3 "Account" means an individual trust account or savings account
4 established in accordance with this article;

5 ["Authority" means the Higher Education Student Assistance
6 Authority;]

7 "Board" means the Prepaid Higher Education Expense Board
8 established pursuant to section 6 of P.L. , c. (C.)(now pending
9 before the Legislature as this bill).

10 "Contributor" means the person or organization contributing to and
11 maintaining an account and having the right to withdraw funds from
12 the account before the account is disbursed to or for the benefit of the
13 designated beneficiary;

14 "Designated beneficiary" means: a. the individual designated at the
15 time the account is opened as the individual whose higher education
16 expenses are expected to be paid from the account; b. the replacement
17 beneficiary if the change in designated beneficiary would not result in
18 a distribution that is included in federal gross income under section
19 529 of the federal Internal Revenue Code of 1986, 26 U.S.C.s.529;
20 and c. in the case of an interest in the program purchased by a state or
21 local government or an organization described in paragraph (3) of
22 subsection (c) of section 501 of the federal Internal Revenue Code of
23 1986, 26 U.S.C.s.501 and exempt from taxation under subsection (a)
24 of section 501 of the federal Internal Revenue Code of 1986,
25 26 U.S.C.s.501, as a part of a scholarship program operated by the
26 government or organization, the individual receiving the interest as a
27 scholarship;

28 "Higher education institution" means an eligible educational
29 institution as defined in or for purposes of section 529 of the federal
30 Internal Revenue Code of 1986, 26 U.S.C.s.529. Higher education
31 institution shall include a proprietary institution if expenses for tuition
32 at the institution would be considered qualified higher education
33 expenses under section 529 of the federal Internal Revenue Code of
34 1986, 26 U.S.C.s.529, but only for degree granting programs licensed
35 or approved by the Commission on Higher Education or for other
36 proprietary institutions as determined by the [authority] board;

37 "Investment Manager" means the Division of Investment in the
38 Department of the Treasury or the private entities authorized to do
39 business in this State that may be designated by the [authority] board
40 to invest the funds of the trust pursuant to the terms of this article;

41 "Member of the family" means a member of the family as defined
42 in or for purposes of section 529 of the federal Internal Revenue Code
43 of 1986, 26 U.S.C.s.529;

44 "Nonqualified withdrawal" means a withdrawal from an account
45 other than: a. a qualified withdrawal; b. a withdrawal made as the
46 result of the death or disability of the designated beneficiary of an

1 account; c. a withdrawal made on account of a scholarship (or
2 allowance or payment described in subparagraph (B) or (C) of
3 paragraph (1) of subsection (d) of section 135 of the federal Internal
4 Revenue Code of 1986, 26 U.S.C.s.135) received by the designated
5 beneficiary, but only to the extent of the amount of that scholarship,
6 allowance or payment; d. a rollover or change in designated
7 beneficiary which would not result in a distribution includible in
8 federal gross income under section 529 of the federal Internal Revenue
9 Code of 1986, 26 U.S.C.s.529; or e. any other withdrawal if the failure
10 of the program to impose a more than de minimis penalty on the
11 withdrawal would cause the program not to be a qualified State tuition
12 program under section 529 of the federal Internal Revenue Code of
13 1986, 26 U.S.C.s.529;

14 "Program" means the "New Jersey Better Educational Savings
15 Trust (NJBEST) Program" established pursuant to this article;

16 "Qualified higher education expenses" means expenses described
17 in paragraph (3) of subsection (e) of section 529 of the federal Internal
18 Revenue Code of 1986, 26 U.S.C.s.529 incurred in connection with
19 the enrollment of a designated beneficiary at a higher education
20 institution;

21 "Qualified withdrawal" means a withdrawal from an account to pay
22 the qualified higher education expenses of the designated beneficiary
23 of the account; but a withdrawal shall not be considered a qualified
24 withdrawal if the failure of the program to impose a more than de
25 minimis penalty on the withdrawal would cause the program not to
26 qualify as a qualified State tuition program under section 529 of the
27 federal Internal Revenue Code of 1986, U.S.C.s.529;

28 "Trust" means the "New Jersey Better Educational Savings Trust"
29 established pursuant to N.J.S.18A:71B-37.

30 (cf: N.J.S.18A:71B-36)

31

32 19. N.J.S.18A:71B-37 is amended to read as follows:

33 18A:71B-37. There is created within the [Higher Education
34 Student Assistance Authority] Prepaid Higher Education Expense
35 Board the New Jersey Better Educational Savings Trust (NJBEST).
36 The trust shall provide a mechanism through which the [authority]
37 board, as trustee, holds accounts established and maintained pursuant
38 to the provisions of this article to finance the cost of qualified higher
39 education expenses.

40 (cf: N.J.S.18A:71B-37)

41

42 20. N.J.S.18A:71B-38 is amended to read as follows:

43 18A:71B-38. The [Higher Education Student Assistance
44 Authority] Prepaid Higher Education Expense Board established
45 pursuant to section 6 of P.L. , c. (C.)(now pending before the
46 Legislature as this bill) shall administer the NJBEST Program. The

1 [authority] board shall have the power to:
2 a. serve as trustee of the trust;
3 b. adopt rules and regulations pursuant to the "Administrative
4 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), necessary to
5 carry out the provisions of this article;
6 c. prescribe and provide appropriate forms for participation in the
7 program;
8 d. select an investment manager and any other contractors needed
9 to manage and market the program;
10 e. monitor the investment manager and any other contractors by
11 audits and other reports;
12 f. collect reasonable administrative fees in connection with any
13 contract or transaction relating to the program;
14 g. impose penalties for nonqualified withdrawals;
15 h. take all actions required so that the program is treated as a
16 qualified State tuition program under section 529 of the federal
17 Internal Revenue Code of 1986, 26 U.S.C.s.529; and
18 i. perform any other acts which may be deemed necessary or
19 appropriate to carry out the objects and purposes of this article.
20 (cf: N.J.S.18A:71B-38)

21
22 21. N.J.S.18A:71B-39 is amended to read as follows:
23 18A:71B-39. Neither the members of the [authority] board, nor
24 any officer or employee of the [authority] board shall be liable
25 personally for the debts, liabilities or obligations of the program
26 established pursuant to this article.
27 (cf: N.J.S.18A:71B-39)

28
29 22. N.J.S.18A:71B-40 is amended to read as follows:
30 18A:71B-40. a. The [authority] board shall select an investment
31 manager or managers to invest the funds of the trust or the funds in
32 accounts. In making this selection, any investment manager shall be
33 subject to the "prudent person" standard of care applicable to the
34 Division of Investment in the Department of the Treasury pursuant to
35 subsection b. of section 11 of P.L.1950, c.270 (C.52:18A-89), and the
36 [authority] board shall consider the impact of fees and costs imposed
37 by the manager or managers on yield to contributors.
38 b. The [authority] board may select more than one investment
39 manager and investment instrument for the program if it is in the best
40 interest of contributors and will not interfere with the administration
41 of the program.
42 c. The [authority] board may provide a contributor with a choice
43 of investment managers or investment instruments or both for the
44 program if both of the following conditions exist:
45 (1) the federal Internal Revenue Service has provided guidance
46 that providing a contributor with a choice of investment managers or

1 instruments under a State tuition program will not cause the program
2 to fail to qualify for favorable tax treatment under section 529 of the
3 federal Internal Revenue Code of 1986, 26 U.S.C.s.529; and

4 (2) the [authority] board concludes that a choice of investment
5 managers or of investment instruments is in the best interest of
6 contributors and will not interfere with the administration of the
7 program.

8 d. If the [authority] board terminates the designation of an
9 investment manager to hold accounts, and accounts must be moved
10 from that investment manager to another investment manager, the
11 [authority] board shall select the investment manager and type of
12 investment instrument to which the balance of the account is moved,
13 unless the federal Internal Revenue Service provides guidance that
14 allowing the contributor to select among several investment managers
15 or investment instruments that have been selected by the [authority]
16 board would not cause a program to cease to be a qualified State
17 tuition program for the purposes of section 529 of the federal Internal
18 Revenue Code, 26 U.S.C.s.529.

19 e. The board, upon the effective date of P.L. , c. (C.)(now
20 pending before the Legislature as this bill) and in accordance with the
21 provisions of P.L.1954, c.48 (C.52:34-6 et seq.), shall select an
22 investment manager or managers for the program. If the selection
23 process provided for in this subsection results in an investment
24 manager other than the Division of Investment, the board shall provide
25 for the orderly transfer of accounts and shall ensure that all the rights
26 of the contributors and designated beneficiaries participating in the
27 program as of the effective date of P.L. , c. (C.)(now pending
28 before the Legislature as this bill), are protected.

29 (cf: N.J.S.18A:71B-40)

30

31 23. N.J.S.18A:71B-41 is amended to read as follows:

32 18A:71B-41. a. The program shall be operated as a trust through
33 the use of accounts for designated beneficiaries. An account may be
34 opened by any person who desires to save to pay the qualified higher
35 education expenses of an individual by satisfying each of the following
36 requirements:

37 (1) completing an application in the form prescribed by the
38 [authority] board;

39 (2) paying the one-time application fee established by the
40 [authority] board;

41 (3) making the minimum contribution required by the [authority]
42 board for opening an account;

43 (4) designating the account or accounts to be opened; and

44 (5) in the case of an account to which subsection a. of
45 N.J.S.A.18A:71B-44 would apply, demonstrating to the satisfaction
46 of the [authority] board that either the contributor, if an individual, or

1 the designated beneficiary is a New Jersey resident. The requirement
2 of New Jersey residency for either the contributor or the designated
3 beneficiary would not apply to an account to which subsection b. of
4 N.J.S.18A:71B-44 would apply unless otherwise determined by the
5 [authority] board.

6 b. Except as provided under N.J.S.18A:71B-42, only the
7 contributor may make contributions to an account after the account is
8 opened.

9 c. Contributions to accounts shall be made only in cash, as defined
10 by the [authority] board pursuant to regulations, in accordance with
11 section 529 of the federal Internal Revenue Code of 1986, 26
12 U.S.C.s.529.

13 d. Contributors may withdraw all or part of the balance from an
14 account on sixty days' notice or a shorter period, as may be authorized
15 by the [authority] board pursuant to regulations.

16 e. A contributor may change the designated beneficiary of an
17 account or rollover all or a portion of an account to another account
18 if the change or rollover would not result in a distribution includible
19 in gross income under section 529 of the federal Internal Revenue
20 Code of 1986, 26 U.S.C.s.529, in accordance with procedures
21 established by the [authority] board.

22 f. In the case of any nonqualified withdrawal, a penalty at a level
23 established by the [authority] board and sufficient to be considered a
24 more than de minimis penalty for purposes of section 529 of the
25 federal Internal Revenue Code of 1986, 26 U.S.C.s.529, shall be
26 withheld and paid to the [authority] board for use in operating and
27 marketing the program. The [authority] board may elect not to
28 impose a penalty if that section ceases to include a provision requiring
29 more than de minimis penalties for a program to qualify as a qualified
30 State tuition program.

31 g. If a contributor makes a nonqualified withdrawal and a penalty
32 amount is not withheld pursuant to subsection f. of this section or the
33 amount withheld is less than the amount required to be withheld under
34 that subsection, the contributor shall pay the unpaid portion of the
35 penalty to the [authority] board at the same time that the contributor
36 files a State income tax return for the taxable year of the withdrawal,
37 or if the contributor does not file a return, the unpaid portion of the
38 penalty shall be paid on or before the due date for the filing of that
39 income tax return.

40 h. Each account shall be maintained separately from each other
41 account under the program.

42 i. Separate records and accounting shall be maintained for each
43 account for each designated beneficiary.

44 j. A contributor to or designated beneficiary of any account shall
45 not direct the investment of any contributions to an account or the
46 earnings from the account, except as permitted under section 529 of

1 the federal Internal Revenue Code of 1986, 26 U.S.C.s.529.

2 k. A contributor or a designated beneficiary shall not use an
3 interest in an account as security for a loan. Any pledge of an interest
4 in an account is of no force and effect.

5 l. The maximum contribution for any designated beneficiary shall
6 be determined by the [authority] board pursuant to regulations, in
7 accordance with section 529 of the federal Internal Revenue Code of
8 1986, 26 U.S.C.s.529.

9 m. Statements, reports on distributions and information returns
10 relating to accounts shall be prepared, distributed, and filed to the
11 extent required by section 529 of the federal Internal Revenue Code
12 of 1986, 26 U.S.C.s.529, or regulations issued thereunder.

13 n. The [authority] board may charge, impose and collect
14 reasonable administrative fees and service charges in connection with
15 any agreement, contract or transaction relating to the program. These
16 fees and charges may be imposed directly on contributors or may be
17 taken as a percentage of the investment earnings on accounts.

18 o. The State or any State agency, municipality, or other political
19 subdivision may, by contract or collective bargaining agreement, agree
20 with any employee to remit contributions to accounts through payroll
21 deductions made by the appropriate officer or officers of the State,
22 State agency, county, municipality, or political subdivision. The
23 contributions shall be held and administered in accordance with this
24 act.

25 (cf: N.J.S.18A:71B-41)

26

27 24. N.J.S.18A:71B-42 is amended to read as follows:

28 18A:71B-42. a. An amount of no less than \$500 shall be provided
29 by the State for the qualified higher education expenses of a
30 designated beneficiary at the time of a qualified withdrawal provided
31 that:

32 (1) the contributor demonstrates, to the satisfaction of the
33 [authority] board, that the contributor participated in the program for
34 at least four years by making a qualifying minimum initial deposit or
35 qualifying minimum annual contributions, or both, as shall be
36 determined by the [authority] board, for a designated beneficiary;

37 (2) the designated beneficiary demonstrates, to the satisfaction of
38 the [authority] board, attendance or enrollment in a higher education
39 institution in this State, at the time of initial attendance or enrollment
40 in the higher education institution; and

41 (3) either the contributor, if an individual, or the designated
42 beneficiary demonstrates, to the satisfaction of the [authority] board,
43 that the contributor or designated beneficiary is a New Jersey resident.

44 b. The amount provided under subsection a. of this section shall
45 meet the requirements of a qualified scholarship within the meaning of

1 section 117 of the federal Internal Revenue Code of 1986,
2 26 U.S.C.s.117, for a designated beneficiary satisfying the
3 requirements of subsection a. of this section.

4 c. A designated beneficiary shall not receive more than one State
5 scholarship provided pursuant to subsection a. of this section.

6 (cf: N.J.S.18A:71B-42)

7

8 25. N.J.S.18A:71B-43 is amended to read as follows:

9 18A:71B-43. Annually, the [authority] board shall determine a
10 dollar amount of an account, which shall not be less than \$25,000,
11 which shall not be considered in evaluating the financial needs of a
12 student enrolled in an institution of higher education located in the
13 State of New Jersey, or be deemed a financial resource or a form of
14 financial aid or assistance to a student, for purposes of determining the
15 eligibility of a student for any scholarship, grant, or monetary
16 assistance awarded by the State; nor shall the amount of any account
17 as determined by the [authority] board provided for a designated
18 beneficiary under this article reduce the amount of any scholarship
19 grant or monetary assistance which the student is entitled to be
20 awarded by the State.

21 (cf: N.J.S.18A:71B-43)

22

23 26. N.J.S.18A:71B-44 is amended to read as follows:

24 18A:71B-44. a. If the investment manager is the Division of
25 Investment in the Department of the Treasury, in order to assure the
26 availability of principal of any amount contributed under this article,
27 there shall be paid to the [authority] board for deposit in the trust, at
28 the time of distribution, subject to appropriation, such sum, if any, as
29 shall be certified by the [chairperson] chair of the [authority] board
30 as necessary to provide that amount at the time of distribution. The
31 [chairperson] chair shall make and deliver to the Governor, or his
32 designee, the certificate stating the sums, if any, required to make
33 available in the trust the amount aforesaid, and the sums so certified
34 shall be appropriated and paid to the [authority] board during the then
35 current State fiscal year.

36 b. If the investment manager is a private entity, the investment of
37 the principal and interest of any amount contributed under this article
38 shall be backed by the full faith and credit of the United States or be
39 fully insured by the Federal Deposit Insurance Corporation or other
40 similar insurer backed by the full faith and credit of the United States.
41 No account balance shall exceed the maximum amount of insurance
42 provided by the insurer. No investment is permitted in derivatives of
43 eligible securities, and any investment must be designed to balance
44 prospective payments according to the guidelines established.

45 (cf: N.J.S.18A:71B-44)

1 27. N.J.S.18A:71B-45 is amended to read as follows:

2 18A:71B-45. a. Nothing in this article shall be construed to:

3 (1) guarantee that a designated beneficiary will be admitted to a
4 higher education institution or be allowed to continue enrollment at or
5 graduate from a higher education institution after admission;

6 (2) establish State residency for a person merely because the
7 person is a designated beneficiary; or

8 (3) guarantee that amounts saved pursuant to the program will be
9 sufficient to cover the qualified higher education expenses of a
10 designated beneficiary.

11 b. Nothing in this article establishes any obligation of this State or
12 any agency or instrumentality of this State to guarantee for the benefit
13 of any contributor or designated beneficiary any of the following:

14 (1) the rate of interest or other return on any account; or

15 (2) the payment of interest or other return on any account.

16 c. Nothing in this article establishes any obligation or liability of
17 this State or any agency or instrumentality of this State with respect
18 to any federal or State tax liability of any contributor or designated
19 beneficiary in this program.

20 d. Under regulations promulgated by the [authority] board, every
21 contract and application that may be used in connection with a
22 contribution to an account shall clearly indicate that the account is not
23 insured by this State nor is the investment return guaranteed by this
24 State.

25 (cf: N.J.S.18A:71B-45)

26

27 28. N.J.S.18A:71B-46 is amended to read as follows:

28 18A:71B-46. If the Congress of the United States enacts
29 legislation that exempts educational savings accounts from federal
30 income taxation, sections N.J.S.18A:71B-42 and N.J.S.18A:71B-43
31 shall apply with respect to such educational savings accounts as if they
32 were accounts established under this act and the beneficiaries of the
33 accounts were designated beneficiaries subject to the approval of the
34 [New Jersey Higher Education Assistance Authority] board.

35 (cf: N.J.S.18A:71B-46)

36

37 29. (New section) Regulations adopted by the New Jersey Higher
38 Education Student Assistance Authority pertaining to the New Jersey
39 Better Educational Savings Trust (NJBEST) Program shall continue
40 with full force and effect under the board for a period of one year from
41 the effective date of this act or until amended, continued or repealed
42 by the board pursuant to law.

43

44 30. Section 13 of P.L..1997, c.237 (C.54A:6-25) is amended to
45 read as follows:

46 13. a. Gross income shall not include earnings on an education
47 individual retirement account or a qualified State tuition program

1 account until the earnings are distributed from the account, at which
 2 time they shall be includible in the gross income of the distributee
 3 except as provided in this section.

4 b. Gross income shall not include qualified distributions as defined
 5 in paragraph (3) of subsection c. of this section.

6 c. For purposes of this section:

7 (1) "Education individual retirement account" means an education
 8 retirement account as defined pursuant to paragraph (1) of subsection
 9 (b) of section 530 of the federal Internal Revenue Code of 1986,
 10 26 U.S.C. s.530.

11 (2) "Qualified State tuition program account" means an account
 12 established pursuant to the "New Jersey Better Educational Savings
 13 Trust (NJBEST) Program," (N.J.S.18A:71B-35 et seq.) , an account
 14 established pursuant to the "New Jersey Prepaid Higher Education
 15 Expense Program,"(P.L. , c. (C.))(now pending before the
 16 Legislature as this bill) or an account established pursuant to any
 17 qualified State tuition program, as defined pursuant to subsection (b)
 18 of section 529 of the federal Internal Revenue Code of 1986,
 19 26 U.S.C. s.529 or a tuition credit or certificate purchased pursuant to
 20 any such program.

21 (3) "Qualified distribution" means any of the following:

22 (a) a distribution from a qualified State tuition program account
 23 that is used for qualified higher education expenses as defined pursuant
 24 to paragraph (3) of subsection (e) of section 529 of the federal Internal
 25 Revenue Code of 1986, 26 U.S.C. s.529;

26 (b) a rollover from one account to another account as described
 27 in clause (i) of subparagraph (C) of paragraph (3) of subsection (c) of
 28 section 529 or paragraph (5) of subsection (d) of section 530 of the
 29 federal Internal Revenue Code of 1986, 26 U.S.C. s.529 or 530;

30 (c) a change in designated beneficiaries of an account as described
 31 in clause (ii) of subparagraph (C) of paragraph (3) of subsection (c) of
 32 section 529 or paragraph (6) of subsection (d) of section 530 of the
 33 federal Internal Revenue Code of 1986, 26 U.S.C. s.529 or 530;

34 d. The portion of a distribution from an education individual
 35 retirement account or a qualified State tuition program account that is
 36 attributable to earnings shall be determined in accordance with the
 37 principles of section 72 of the federal Internal Revenue Code of 1986,
 38 26 U.S.C. s.72, as applied for purposes of sections 529 and 530 of the
 39 federal Internal Revenue Code of 1986, 26 U.S.C. ss.529 and 530.

40 (cf: P.L.1999, c.116, s.1)

41

42 31. There is appropriated from the General Fund to the Prepaid
 43 Higher Education Expense Board in, but not of, the Department of
 44 State \$250,000 to effectuate the provisions of this act.

45

46 32. This act shall take effect immediately.

ASSEMBLY EDUCATION COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR ASSEMBLY, Nos. 1622 and 2296

STATE OF NEW JERSEY

DATED: DECEMBER 7, 2000

The Assembly Education Committee reports favorably an Assembly Committee Substitute for Assembly Bill Nos. 1622 and 2296.

This committee substitute is entitled the "New Jersey Prepaid Higher Education Expense Program Act of 2000." It establishes the New Jersey Prepaid Higher Education Expense Program to provide a mechanism through which the cost of tuition may be paid in advance of enrollment in an institution of higher education at a rate lower than the cost at the time of actual enrollment. The substitute provides for the creation of the Prepaid Higher Education Expense Board in, but not of, the Department of State. The board will consist of the State Treasurer, the executive director of the Commission on Higher Education, the executive director of the Higher Education Student Assistance Authority, the chair of the New Jersey Presidents' Council, or their designees, and seven members appointed by the Governor who will possess knowledge, skill and experience in the areas of accounting, actuary, risk management or investment management. The board will be responsible for administering the New Jersey Prepaid Higher Education Expense Program.

The board, with the assistance of the Office of the Attorney General, will develop an advance payment contract. The committee substitute sets forth the following provisions that must be included in an advance payment contract:

- the amount of the payment and the number of payments required;
- the terms and conditions under which a purchaser will remit payments, including, but not limited to, the dates upon which each payment will be due;
- provisions for late payment charges and for default;
- provisions for penalty fees for withdrawals from the fund;
- the name and date of birth of the qualified beneficiary on whose behalf the contract is drawn and the terms and conditions under which another person may be substituted as the qualified beneficiary;
- the name of any person who may cancel the contract;
- the terms and conditions under which a contract may be canceled, the name of the person entitled to any refund due as a result of the cancellation, and the amount of refund, if any, due to the

person named;

- the time limitations, if any, within which the qualified beneficiary must claim benefits through the program; and
- other terms and conditions deemed by the board to be necessary or proper.

In addition to these general provisions, the substitute also requires that the advance payment contract include specific provisions, including the number of credit hours contracted by the purchaser and whether the credit hours will be applied toward a four-year public institution of higher education or a county college. The advance payment contract will also include a provision obligating the board to provide to the qualified beneficiary the specified number of credit hours of undergraduate instruction at a public institution of higher education, not to exceed the average number of credit hours required for the conferral of the degree that corresponds to the plan purchased on behalf of the qualified beneficiary.

Under the committee substitute, the board will be required to make advance payment contracts available for two independent plans, at a minimum, to be known as the county college plan and the university plan. Through a county college plan, the advance payment contract will provide prepaid tuition for a specified number of undergraduate credit hours not to exceed the average number of hours required for the conferral of an associate degree. Through a university plan, the advance payment contract will provide prepaid tuition for a specified number of undergraduate credit hours not to exceed the average number of hours required for the conferral of a baccalaureate degree. The cost of participating in each of these plans will be based primarily on the average current and projected tuition within the county college system or the four-year public institutions of higher education system, respectively, and the number of years expected to elapse between the purchase of the plan and the exercise of the benefits by the qualified beneficiary.

The committee substitute permits a county college plan or a university plan to be applied toward any independent institution of higher education. Under these circumstances, the board will transfer to these institutions an amount not to exceed the weighted average tuition purchased under the advance payment contract. If the costs at the independent institution of higher education are less than the weighted average tuition purchased under the advance payment contract, then the amount transferred may not exceed the actual cost of tuition.

The committee substitute also permits the benefits of an advance payment contract to be applied toward an eligible out-of-state institution of higher education. Under these circumstances, the board will transfer to these institutions an amount not to exceed the weighted average tuition purchased under the advance payment contract. If the costs at the out-of-state institution are less than the weighted average

tuition purchased under the advance payment contract, then the amount transferred may not exceed the actual cost of tuition.

The committee substitute guarantees that in the event that the moneys in the fund are insufficient to offset the obligations of the board, then the State will meet those obligations. As a measure of protection for the State, the State Treasurer may discontinue the program if it is determined that the program is financially infeasible. Under these conditions, a qualified beneficiary who has been accepted by and is enrolled, or is within five years of enrollment, in an institution of higher education will be entitled to exercise the benefits for which he has contracted. All other contract holders will receive a refund of the amount paid into the fund, plus interest at the prevailing rate.

The committee substitute provides that a qualified beneficiary who graduates from high school with a 3.0 cumulative grade point average on a 4.0 scale in an academic program or a 3.2 cumulative grade point average on a 4.0 scale in a vocational-educational program, based upon grades in core curriculum content subject areas, or who graduates in the top 15% of his high school graduating class will be admitted to a public institution of higher education. The qualified beneficiary must, however, meet all of the institution's requirements for admittance.

The committee substitute also amends the law establishing the New Jersey Better Educational Savings Trust (NJBEST) Program. The responsibility for the program's administration is shifted from the Higher Education Student Assistance Authority to the Prepaid Higher Education Expense Board, which is also administering the New Jersey Prepaid Higher Education Expense Program. The committee substitute also provides that the board must, after the effective date of the act, select an investment manager for the program pursuant to the provisions of the State public contracting law. In the event that the investment manager changes due to this provision, the board must provide for the orderly transfer of accounts and must ensure that all the rights of the contributors and designated beneficiaries are protected.

The committee substitute also amends the State tax code to specifically include the New Jersey Prepaid Higher Education Expense Program as a qualified State tuition program under which the earnings are not included in gross income until they are distributed from the account.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR **ASSEMBLY, Nos. 1622 and 2296**

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: FEBRUARY 5, 2001

The Assembly Appropriations Committee reports favorably Assembly Bill Nos. 1622 and 2296 ACS, with committee amendments.

Assembly Bill Nos. 1622 and 2296 ACS, as amended, provides the "New Jersey Prepaid Higher Education Expense Program Act of 2000." It establishes the New Jersey Prepaid Higher Education Expense Program to provide a mechanism through which the cost of tuition may be paid in advance of enrollment in an institution of higher education at a rate lower than the cost at the time of actual enrollment.

The bill establishes the Prepaid Higher Education Expense Board in, but not of, the Department of State. The board will consist of the State Treasurer, the executive director of the Commission on Higher Education, the executive director of the Higher Education Student Assistance Authority, the chair of the New Jersey Presidents' Council, or their designees, and seven members appointed by the Governor who will possess knowledge, skill and experience in the areas of accounting, actuary, risk management or investment management. The board will be responsible for administering the New Jersey Prepaid Higher Education Expense Program.

The board, with the assistance of the Office of the Attorney General, will develop an advance payment contract. The bill sets forth the following provisions that must be included in an advance payment contract:

- the amount of the payment and the number of payments required;
- the terms and conditions under which a purchaser will remit payments, including, but not limited to, the dates upon which each payment will be due;
- provisions for late payment charges and for default;
- provisions for penalty fees for withdrawals from the fund;
- the name and date of birth of the qualified beneficiary on whose behalf the contract is drawn and the terms and conditions under which another person may be substituted as the qualified beneficiary;
- the name of any person who may cancel the contract;
- the terms and conditions under which a contract may be canceled,

the name of the person entitled to any refund due as a result of the cancellation, and the amount of refund, if any, due to the person named;

- the time limitations, if any, within which the qualified beneficiary must claim benefits through the program;
- the terms and conditions, if any, under which a purchaser may designate another individual as a successor owner of the contract; and
- other terms and conditions deemed by the board to be necessary or proper.

In addition to these general provisions, the bill also requires that the advance payment contract include specific provisions, including the number of credit hours contracted by the purchaser and whether the credit hours will be applied toward a four-year public institution of higher education or a county college. The advance payment contract will also include a provision obligating the board to provide to the qualified beneficiary the specified number of credit hours of undergraduate instruction at a public institution of higher education, not to exceed the maximum number of credit hours required for the conferral of the degree that corresponds to the plan purchased on behalf of the qualified beneficiary.

The bill requires the board to make advance payment contracts available for two independent plans, at a minimum, to be known as the county college plan and the university plan. Through a county college plan, the advance payment contract will provide prepaid tuition for a specified number of undergraduate credit hours not to exceed the maximum number of hours required for the conferral of an associate degree. Through a university plan, the advance payment contract will provide prepaid tuition for a specified number of undergraduate credit hours not to exceed the maximum number of hours required for the conferral of a baccalaureate degree. The cost of participating in each of these plans will be based primarily on the average current and projected tuition within the county college system or the four-year public institutions of higher education system, respectively, and the number of years expected to elapse between the purchase of the plan and the exercise of the benefits by the qualified beneficiary.

The bill permits a county college plan or a university plan to be applied toward any independent institution of higher education. Under these circumstances, the board will transfer to these institutions an amount not to exceed the weighted average tuition purchased under the advance payment contract. If the costs at the independent institution of higher education are less than the weighted average tuition purchased under the advance payment contract, then the amount transferred may not exceed the actual cost of tuition.

The bill also permits the benefits of an advance payment contract to be applied toward an eligible out-of-state institution of higher education. Under these circumstances, the board will transfer to these institutions an amount not to exceed the weighted average tuition purchased under the advance payment contract. If the costs at the

out-of-state institution are less than the weighted average tuition purchased under the advance payment contract, then the amount transferred may not exceed the actual cost of tuition.

The bill guarantees that if the moneys in the fund are insufficient to offset the obligations of the board, then the State will meet those obligations. As a measure of protection for the State, the State Treasurer may discontinue the program if it is determined that the program is financially infeasible. Under these conditions, a qualified beneficiary who has been accepted by and is enrolled, or is within five years of enrollment, in an institution of higher education will be entitled to exercise the benefits for which the beneficiary has contracted. All other contract holders will receive a refund of the amount paid into the fund.

The bill provides that a qualified beneficiary who graduates from high school with a 3.0 cumulative grade point average on a 4.0 scale in an academic program or a 3.2 cumulative grade point average on a 4.0 scale in a vocational education program, based upon grades in core curriculum content subject areas, or who graduates in the top 15% of his high school graduating class will be admitted to a public institution of higher education. The qualified beneficiary must, however, meet all of the institution's requirements for admittance.

The bill also amends the law establishing the New Jersey Better Educational Savings Trust (NJBEST) Program. The responsibility for the program's administration is shifted from the Higher Education Student Assistance Authority to the Prepaid Higher Education Expense Board, which is also administering the New Jersey Prepaid Higher Education Expense Program. The bill also provides that the board must, after the effective date of the act, select an investment manager for the program pursuant to the provisions of the State public contracting law. In the event that the investment manager changes due to this provision, the board must provide for the orderly transfer of accounts and must ensure that all the rights of the contributors and designated beneficiaries are protected.

The bill also amends the State gross income tax code to specifically include the New Jersey Prepaid Higher Education Expense Program as a qualified State tuition program under which the earnings are not included in gross income until they are distributed from the account.

FISCAL IMPACT:

Without information about plan details and participation rates, the fiscal impact of the bill cannot be determined at this time. The department has estimated initial staffing, facilities and promotion costs at \$500,000.

COMMITTEE AMENDMENTS:

The amendments:

- allow the Prepaid Higher Education Expense Board to determine whether mandatory fees charged by institutions of higher education

will be included in tuition costs and thereby covered by the advance payment contract;

- clarify that under the advance payment contract a public institution of higher education at which a qualified beneficiary is enrolled will be paid an amount equal to the tuition rate at the time the benefits are exercised for the number of credit hours purchased;

- permit the board to determine whether to impose limits on the total amount of time that the qualified beneficiary is permitted to exercise the benefits under the program;

- set forth in greater detail the types of services that may be necessary to implement the program and clarify that these services may be provided either by a single or multiple entities;

- provide that the advance payment contract will set forth the terms and conditions, if any, under which a purchaser may designate another individual as a successor owner of the contract;

- provide that under the county college plan and the university plan the number of credit hours that can be purchased cannot exceed the maximum number of credit hours required for the conferral of the applicable degree;

- clarify that a qualified beneficiary would only be considered a resident for tuition purposes during the period in which benefits under the program were being utilized;

- permit the board to allow the qualified beneficiary to exercise benefits under the program rather than receive a refund, if the beneficiary is the recipient of a certain type of scholarship, for example, one that may cover both tuition and room and board;

- provide that if the State Treasurer discontinues the program, a qualified beneficiary, other than one who has been accepted by, is enrolled or is within five years of enrollment in an institution of higher education, shall be entitled to receive a refund of only the amount paid into the fund, rather than the amount paid into the fund plus interest at the prevailing rate; and

- require that if the investment manager for NJBEST is a private entity, the investment of the amounts contributed under the program will be made according to an investment plan approved by the State Investment Council in the Division of Investment.

[First Reprint]

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 1622 and 2296

STATE OF NEW JERSEY
209th LEGISLATURE

ADOPTED DECEMBER 7, 2000

Sponsored by:

Assemblyman KEVIN J. O'TOOLE

District 21 (Essex and Union)

Assemblyman FRANCIS J. BLEE

District 2 (Atlantic)

Assemblyman DAVID W. WOLFE

District 10 (Monmouth and Ocean)

Assemblyman ANTHONY IMPREVEDUTO

District 32 (Bergen and Hudson)

Co-Sponsored by:

**Assemblymen Garcia, Gusciora, Assemblywoman Greenstein,
Assemblymen Steele, Stanley, Zecker, Arnone, Conaway, Assemblywoman
Previte and Assemblyman Connors**

SYNOPSIS

Establishes New Jersey Prepaid Higher Education Expense Program.

CURRENT VERSION OF TEXT

As reported by the Assembly Appropriations Committee on February 5,
2001, with amendments.



(Sponsorship Updated As Of: 3/23/2001)

1 **AN ACT** establishing a Prepaid Higher Education Expense Program,
2 amending and supplementing Title 18A of the New Jersey Statutes
3 and making an appropriation.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. (New section) Sections 1 through 16 of this act shall be known
9 and may be cited as the "New Jersey Prepaid Higher Education
10 Expense Program Act of 2000."

11
12 2. (New section) The Legislature finds and declares: that
13 educational opportunity at the college and university level is a critical
14 State interest which is linked to the needs of the State to ensure a
15 well-educated work force; that educational opportunity is best ensured
16 through the provision of institutions of higher education which are
17 geographically and financially accessible; that it is in the best interests
18 of this State to adopt and foster mechanisms which will encourage its
19 citizens to engage in the timely financial planning which is necessary
20 to guarantee that students will have the financial resources necessary
21 to pursue a higher education given the annually escalating level of
22 resources which such attendance requires; and that one such
23 mechanism which has proven successful in some other states is the
24 establishment of a program through which ¹**[many]** a portion¹ of the
25 costs associated with attendance at institutions of higher education
26 may be paid in advance and fixed at a guaranteed level for the
27 duration of undergraduate enrollment.

28
29 3. (New section) As used in sections 1 through 16 of this act:
30 "Advance payment contract" means a contract entered into by the
31 board and a purchaser pursuant to the provisions of this act;

32 "Board" means the Prepaid Higher Education Expense Board
33 established pursuant to section 6 of this act;

34 "Eligible independent institution of higher education" means those
35 institutions of higher education incorporated and located in this State,
36 which, by virtue of law or character or license, are nonprofit
37 educational institutions empowered to grant academic degrees and
38 which provide a level of education which is equivalent to the education
39 provided by the State's public institutions of higher education as
40 attested by the receipt of and continuation of regional accreditation by
41 the Middle States Association of Colleges and Schools, and which are

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly AAP committee amendments adopted February 5, 2001.

1 eligible to receive State aid under the provisions of the Constitution of
2 the United States and the Constitution of the State of New Jersey and
3 whose students are eligible to receive benefits under section 529 of the
4 federal Internal Revenue Code of 1986, 26 U.S.C. s.529. ¹"Eligible
5 independent institution of higher education" shall include a proprietary
6 institution if expenses for tuition at the institution would be considered
7 qualified higher education expenses under section 529 of the federal
8 Internal Revenue Code of 1986, 26 U.S.C.s.529, but only for degree
9 granting programs licensed or approved by the Commission on Higher
10 Education or for other proprietary institutions as determined by the
11 board.¹ "Eligible independent institution of higher education" does not
12 include any educational institution dedicated primarily to the
13 preparation or training of ministers, priests, rabbis, or other
14 professional persons in the field of religion;

15 "Fund" means the Prepaid Higher Education Expense Trust Fund
16 established pursuant to section 5 of this act;

17 "Institution of higher education" means an eligible educational
18 institution as defined in or for purposes of section 529 of the federal
19 Internal Revenue Code of 1986, 26 U.S.C.s.529. ¹["Institution of
20 higher education" shall include a proprietary institution if expenses for
21 tuition at the institution would be considered qualified higher
22 education expenses under section 529 of the federal Internal Revenue
23 Code of 1986, 26 U.S.C.s.529, but only for degree granting programs
24 licensed or approved by the Commission on Higher Education or for
25 other proprietary institutions as determined by the board]¹;

26 "Program" means the New Jersey Prepaid Higher Education
27 Expense Program established pursuant to section 4 of this act;

28 "Public institution of higher education" means Rutgers, The State
29 University, the State colleges or universities established pursuant to
30 chapter 64 of Title 18A of the New Jersey Statutes, the New Jersey
31 Institute of Technology, the University of Medicine and Dentistry of
32 New Jersey, the county colleges and any other public university or
33 college now or hereafter established or authorized by State law. A
34 public institution of higher education is an institution whose students
35 are eligible to receive benefits under section 529 of the federal Internal
36 Revenue Code of 1986, 26 U.S.C. s.529;

37 "Purchaser" means a person who makes or is obligated to make
38 payments in accordance with an advance payment contract;

39 "Qualified beneficiary" means: a. a resident of this State at the
40 time a purchaser enters into an advance payment contract on behalf of
41 the resident; or b. a nonresident who is the child of a noncustodial
42 parent who is a resident of the State at the time that the noncustodial
43 parent enters into an advance payment contract on behalf of the child;

44 "Tuition" means the charges imposed by an institution of higher
45 education for enrollment at the institution. ¹The Prepaid Higher
46 Education Expense Board shall determine whether mandatory fees

1 charged by institutions of higher education shall be included in the
2 definition of tuition.¹

3
4 4. (New section) a. There is established the New Jersey Prepaid
5 Higher Education Expense Program to provide a means for payment
6 of the costs of tuition in advance of enrollment at ¹[an] a public¹
7 institution of higher education. Moneys remitted in accordance with
8 advance payment contracts shall be combined and invested in a manner
9 that ¹[yields, at a minimum,] is intended to yield¹ sufficient interest to
10 generate the difference between the prepaid amount and the average
11 in-state tuition costs at public institutions of higher education in the
12 State at the time that the benefits are exercised. ¹The program shall
13 pay to the public institution of higher education at which the qualified
14 beneficiary is enrolled an amount equal to the institution's tuition rate
15 at the time the benefits are exercised.¹

16 b. The program shall be administered by the Prepaid Higher
17 Education Expense Board established pursuant to section 6 of this act.

18

19 5. (New section) a. There is created within the Prepaid Higher
20 Education Expense Board the Prepaid Higher Education Expense
21 Trust Fund. The fund shall consist of State appropriations, moneys
22 acquired from other governmental or private sources, and moneys
23 remitted in accordance with advance payment contracts. Dividends,
24 interest, and gains accruing to the fund shall increase the total funds
25 available for the program.

26 b. Any funds associated with contracts for which refunds are due,
27 but have not been claimed, shall increase the total funds available for
28 the program. However, the board shall establish procedures for
29 notifying purchasers of any unclaimed refund and shall establish a time
30 period after which a refund may not be claimed.

31 c. Any balance contained in the fund at the end of a fiscal year
32 shall remain therein and shall be available for carrying out the purposes
33 of the program.

34 d. The assets of the fund shall be maintained, invested, and
35 expended solely for the purposes of this act and shall not be loaned,
36 transferred, or otherwise used by the State for any purpose other than
37 the purposes of this act. This subsection shall not be construed to
38 prohibit the board from investing in, by purchase or otherwise, bonds,
39 notes or other obligations of the State or an agency or instrumentality
40 of the State.

41 e. Unless otherwise specified by the board, assets of the fund shall
42 be expended in the following order of priority:

43 (1) to make payments to institutions of higher education on behalf
44 of qualified beneficiaries;

45 (2) to make refunds upon cancellation of advance payment
46 contracts; and

1 (3) to pay the costs of program administration and operations.

2 f. The board shall administer the fund in a manner that is
3 sufficiently actuarially sound to defray the obligations of the program.
4 The board shall annually evaluate or cause to be evaluated the
5 actuarial soundness of the fund. If the board determines a need for
6 additional assets in order to preserve actuarial soundness, the board
7 may adjust the terms of subsequent advance payment contracts to
8 ensure soundness.

9 g. If the board finds that a surplus in the fund exists, the board
10 may compensate purchasers of advance payment contracts in a manner
11 that the board determines to be appropriate.

12

13 6. (New section) a. The Prepaid Higher Education Expense
14 Board is established as a body corporate and politic in the Executive
15 Branch of State Government and for the purposes of complying with
16 the provisions of Article V, Section IV, paragraph 1 of the New Jersey
17 Constitution, the board is allocated in but not of the Department of
18 State. Notwithstanding this allocation, the board shall be independent
19 of any supervision or control by the department or by any board or
20 officer thereof.

21 b. The board shall consist of 11 members, including the State
22 Treasurer or a designee, the executive director of the Commission on
23 Higher Education or a designee, the executive director of the Higher
24 Education Student Assistance Authority or a designee, the chair of
25 the New Jersey Presidents' Council or a designee; and seven members
26 appointed by the Governor without regard for political affiliation, one
27 upon the recommendation of the Speaker of the General Assembly,
28 one upon the recommendation of the Minority Leader of the General
29 Assembly, one upon the recommendation of the President of the
30 Senate, and one upon the recommendation of the Minority Leader of
31 the Senate. Each member appointed by the Governor shall possess
32 knowledge, skill, and experience in the areas of accounting, actuary,
33 risk management or investment management. Members appointed by
34 the Governor shall serve terms of three years, except that in making
35 the initial appointments, the Governor shall appoint two members to
36 serve for one year, two members to serve for two years, and three
37 members to serve for three years. Any member appointed to fill a
38 vacancy on the board shall be appointed in a like manner and shall
39 serve until a successor qualifies. Members of the board shall serve
40 without compensation but shall be reimbursed for any necessary
41 expenses incurred in the performance of their duties.

42 c. The Governor shall appoint a member of the board to serve as
43 the initial chair of the board. Thereafter, the board shall elect a chair
44 annually. The board shall annually elect a board member to serve as
45 vice-chair and shall designate a secretary-treasurer who need not be a
46 member of the board. The secretary-treasurer shall keep a record of

1 the proceedings of the board and shall be the custodian of all printed
2 material filed with or by the board and of its official seal.
3 Notwithstanding the existence of vacancies on the board, a majority of
4 the members shall constitute a quorum. The board shall take no
5 official action in the absence of a quorum. The board shall meet, at a
6 minimum, on a quarterly basis at the call of the chair.

7 d. Neither the members of the board, nor any officer or employee
8 of the board shall be liable personally for the debts, liabilities or
9 obligations of the program established pursuant to this act.

10

11 7. (New section) The board shall have the powers necessary or
12 proper to carry out the provisions of this act, including, but not limited
13 to, the power to:

14 a. appoint an executive director to serve as the chief administrative
15 and operational officer of the board and to perform other duties
16 assigned by the board;

17 b. adopt an official seal and alter the same at pleasure;

18 c. sue and be sued in its own name;

19 d. make and enter into all contracts and agreements necessary or
20 incidental to the performance of its duties and the execution of its
21 powers in accordance with the provisions of P.L.1954, c.48 (C.52:34-
22 6 et seq.);

23 e. purchase, without advertising for bids or after having rejected
24 all bids obtained pursuant to advertising therefor, any materials,
25 supplies, goods, services or equipment pursuant to a contract or
26 contracts for such materials, supplies, goods, services or equipment
27 entered into on behalf of the State by the Division of Purchase and
28 Property;

29 f. establish agreements or other transactions with federal, State,
30 and local agencies, including institutions of higher education;

31 g. invest funds not required for immediate disbursement;

32 h. hold, buy, and sell any instruments, obligations, securities, and
33 property determined appropriate by the board;

34 i. employ personnel, including financial and computer experts,
35 legal counsel, accountants, managers and auditors, as may be
36 necessary; to fix their compensation; and to promote and discharge the
37 employees and agents; all without regard to the provisions of Title
38 11A of the New Jersey Statutes;

39 j. solicit and accept gifts, grants, loans, and other aids from any
40 source or participate in any other way in any government program to
41 carry out the purposes of this act;

42 k. require a reasonable length of State residence for qualified
43 beneficiaries, as appropriate;

44 l. reasonably restrict the number of participants in the county
45 college plan and the university plan according to criteria developed by
46 the board. A person denied participation solely on the basis of this

- 1 restriction shall be granted priority for participation during the
2 succeeding year;
- 3 m. segregate contributions and payments to the fund into various
4 accounts;
- 5 n. ¹[require and collect] establish reasonable¹ administrative fees
6 in connection with any transaction and impose reasonable penalties,
7 including default, for delinquent payments or for entering into an
8 advance payment contract on a fraudulent basis;
- 9 o. procure insurance against any loss in connection with the
10 property, assets and activities of the fund or the board;
- 11 p. provide for the receipt of contributions in lump sums or
12 installment payments;
- 13 q. impose reasonable ¹[time]¹ limits on ¹[use of the tuition
14 benefits provided by the program] the length of time within which a
15 qualified beneficiary shall be required to begin to exercise benefits
16 under the program. The board shall also determine whether to impose
17 limits on the total amount of time that the qualified beneficiary is
18 permitted to exercise the benefits under the program¹ ;
- 19 r. delineate the terms under which payments may be withdrawn
20 from the fund and impose reasonable fees and charges for withdrawals;
- 21 s. define for the purposes of this act the ¹[average] maximum¹
22 number of hours required for the conferral of an associate degree; the
23 ¹[average] maximum¹ number of hours required for the conferral of
24 a baccalaureate degree; the average current and projected tuition
25 within the county college system and the average current and projected
26 tuition of the four-year public institutions of higher education;
- 27 t. determine whether the New Jersey Better Educational Savings
28 Trust (NJBEST) Program established pursuant to N.J.S.18A:71B-35
29 through N.J.S.18A:71B-46 and the New Jersey Prepaid Higher
30 Education Expense Program should be marketed by a single private
31 entity and whether a single private entity should manage both
32 programs on behalf of the board;
- 33 u. adopt rules and regulations to implement this act; and
- 34 v. take all actions required so that the program is treated as a
35 qualified State tuition program under section 529 of the federal
36 Internal Revenue Code of 1986, 26 U.S.C.s.529.
- 37
- 38 8. (New section) a. The board, acting with the approval of the
39 State Investment Council in the Division of Investment, shall establish
40 a comprehensive investment plan for the purposes of this act and
41 annually review the plan to assure that the program remains actuarially
42 sound. The comprehensive investment plan shall specify the
43 investment policies to be utilized by the board in its administration of
44 the fund. The board may place assets of the fund in savings accounts
45 or use the funds to purchase fixed or variable life insurance or annuity
46 contracts, securities, evidence of indebtedness or other investment

1 products, pursuant to the comprehensive investment plan and in such
2 proportions as may be designated or approved under that plan. The
3 board shall be subject to the "prudent person" standard of care
4 applicable to the Division of Investment in the Department of the
5 Treasury pursuant to subsection b. of section 11 of P.L.1950, c.270
6 (C.52:18A-89). The insurance, annuity, savings or investment
7 products shall be underwritten and offered in compliance with the
8 applicable federal and State laws and regulations and by persons who
9 are duly authorized by applicable federal and State authorities.

10 b. The board may delegate responsibility for administration of the
11 ¹[comprehensive investment plan required pursuant to subsection a.
12 of this section] program¹ to a person the board determines to be
13 qualified. Directly or through the person, the board may contract, in
14 accordance with the provisions of P.L.1954, c.48 (C.52:34-6 et seq.),
15 with a private corporation or institution ¹authorized to do business in
16 this State¹ to provide such services as may be a part of the
17 ¹[comprehensive investment plan] program¹ or as may be deemed
18 necessary for implementation of the ¹[comprehensive investment plan]
19 program¹, including, but not limited to, providing consolidated billing,
20 individual and collective record keeping and accounting, ¹[and]¹ asset
21 purchase, control and safekeeping ¹, investment management,
22 marketing, administration, program operations, and other services
23 deemed necessary and proper to carry out the purposes of this act.

24 The board shall determine whether the services deemed necessary
25 and proper to carry out the purposes of this act shall be provided by
26 a single or multiple entities¹.

27 c. The board shall annually prepare or cause to be prepared a
28 report setting forth in appropriate detail an accounting of the fund and
29 a description of the financial condition of the program at the close of
30 each fiscal year. The report shall be submitted to the Governor, the
31 President of the Senate, the Speaker of the General Assembly, the
32 State Treasurer, the executive director of the New Jersey Commission
33 on Higher Education and the executive director of the Higher
34 Education Student Assistance Authority on or before August 1 each
35 year. In addition, the board shall make the report available to
36 purchasers of advance payment contracts. The board shall provide to
37 the Commission on Higher Education by August 1 each year complete
38 advance payment contract sales information, including projected
39 higher education enrollments of qualified beneficiaries.

40 d. The accounts of the funds shall be subject to annual audits by
41 the State Auditor or a designee. In addition, the board shall
42 commission an annual independent audit of the program. The results
43 of the independent audit shall be provided to the Governor, the
44 President of the Senate, the Speaker of the General Assembly, the
45 State Treasurer, the executive director of the New Jersey Commission
46 on Higher Education and the executive director of the Higher

1 Education Student Assistance Authority. If the board delegates
2 responsibility for the administration of the comprehensive investment
3 plan pursuant to subsection b. of this section, the cost of the
4 independent audit shall be borne by that person.

5 e. The board may make available insurance coverage written
6 exclusively for the purpose of protecting advance payment contracts,
7 and the purchasers or beneficiaries thereof, which may be issued in the
8 form of a group term life policy to purchasers of advance payment
9 contracts.

10 f. ¹[The board may solicit proposals for the marketing of the
11 program or may delegate this responsibility to the person who is
12 administering the comprehensive investment plan pursuant to
13 subsection b. of this section. The entity designated pursuant to this
14 subsection shall serve as a centralized marketing agent for the program
15 and shall be solely responsible for the marketing of the program.]¹

16 Materials produced for the purpose of marketing the program shall be
17 submitted to the board for review and approval. Marketing materials
18 shall not be made available or distributed to the public prior to the
19 materials being approved by the board. An institution of higher
20 education may distribute marketing materials produced for the
21 program. The State and the board shall not be liable for
22 misrepresentation of the program by a marketing agent.

23 ¹[A single entity may be selected to market both the New Jersey
24 Prepaid Higher Education Expense Program and the New Jersey
25 Better Educational Savings Trust (NJBEST) Program established
26 pursuant to N.J.S.18A:71B-35 through N.J.S.18A:71B-46.

27 Nothing in this subsection shall preclude the person who is
28 administering the comprehensive investment plan pursuant to
29 subsection b. of this section from marketing both the New Jersey
30 Prepaid Higher Education Expense Program and the New Jersey
31 Better Educational Savings Trust (NJBEST) Program established
32 pursuant to N.J.S.18A:71B-35 through N.J.S.18A:71B-46.]¹

33 g. Statements, reports on distributions and information returns
34 relating to accounts shall be prepared, distributed, and filed to the
35 extent required by section 529 of the federal Internal Revenue Code
36 of 1986, 26 U.S.C. s.529.

37
38 9. (New section) a. The board shall develop an advance payment
39 contract with the assistance of the Office of the Attorney General. An
40 advance payment contract shall be exempt from the provisions of
41 Subtitle 3 of Title 17 of the Revised Statutes and Subtitle 3 of Title
42 17B of the New Jersey Statutes. The contents of the contract shall
43 include, but not be limited to, the following:

44 (1) the amount of the payments and the number of payments
45 required from a purchaser;

46 (2) the terms and conditions under which purchasers are required

1 to remit payments, including, but not limited to, the date or dates upon
2 which each payment is due;

3 (3) provisions for late payment charges and for default;

4 (4) provisions for penalty fees for withdrawals from the fund;

5 (5) the name and date of birth of the qualified beneficiary on
6 whose behalf the contract is drawn and the terms and conditions under
7 which another person may be substituted as the qualified beneficiary;

8 (6) the name of any person who may cancel the contract. The
9 terms of the contract shall specify whether the contract may be
10 canceled by the purchaser, the qualified beneficiary, a specific
11 designated person or any combination of these persons;

12 (7) the terms and conditions under which a contract may be
13 canceled, the name of the person entitled to any refund due as a result
14 of the cancellation of the contract pursuant to those terms and
15 conditions, and the method for determining the amount of refund;

16 (8) the time limitations, if any, within which the qualified
17 beneficiary is required to claim benefits through the program. If time
18 limitations are included in the contract, the time expended by a
19 qualified beneficiary as an active duty member of any of the armed
20 services of the United States shall be added to the period of time
21 permitted to exercise the benefits;

22 ¹(9) the terms and conditions, if any, under which a purchaser may
23 designate another individual as a successor owner of the contract; ¹and

24 ¹[(9)] (10) ¹ other terms and conditions deemed by the board to
25 be necessary or proper.

26 b. In addition to the provisions of subsection a. of this section an
27 advance payment contract shall include the following:

28 (1) the number of credit hours contracted by the purchaser;

29 (2) the plan toward which the credit hours shall be applied;

30 (3) the assumption of a contractual obligation by the board to the
31 qualified beneficiary to provide for a specified number of credit hours
32 of undergraduate instruction at a public institution of higher education,
33 not to exceed the average number of credit hours required for the
34 conferral of the degree that corresponds to the plan purchased on
35 behalf of the qualified beneficiary.

36
37 10. (New section) a. At a minimum, the board shall make
38 advance payment contracts available for two independent plans to be
39 known as the county college plan and the university plan.

40 (1) Through the county college plan, the advance payment
41 contract shall provide prepaid tuition for a specified number of
42 undergraduate credit hours not to exceed the ¹[average] maximum¹
43 number of hours required for the conferral of an associate degree. The
44 cost of participation in the county college plan shall be based
45 primarily on the average current and projected tuition within the
46 county college system and the number of years expected to elapse

1 between the purchase of the plan on behalf of a qualified beneficiary
2 and the exercise of the benefits provided in the plan by the qualified
3 beneficiary. Qualified beneficiaries shall bear the cost of any
4 laboratory fees associated with enrollment in specific courses. ¹In the
5 event that a qualified beneficiary chooses to attend a four-year public
6 institution of higher education, the qualified beneficiary may convert
7 the maximum number of credit hours required for the conferral of an
8 associate degree from a county college plan to a university plan.¹
9 Each qualified beneficiary shall be classified as a resident for tuition
10 purposes regardless of his actual legal residence ¹ during the period in
11 which benefits under the program are being utilized.¹

12 (2) Through the university plan, the advance payment contract
13 shall provide prepaid tuition for a specified number of undergraduate
14 credit hours not to exceed the ¹[average] maximum¹ number of hours
15 required for the conferral of a baccalaureate degree. The cost of
16 participation in the university plan shall be based primarily on the
17 average current and projected tuition of the four-year public
18 institutions of higher education and the number of years expected to
19 elapse between the purchase of the plan on behalf of a qualified
20 beneficiary and the exercise of the benefits provided in the plan by the
21 beneficiary. Qualified beneficiaries shall bear the cost of any
22 laboratory fees associated with enrollment in specific courses. In the
23 event that a qualified beneficiary fails to be admitted to a four-year
24 public institution of higher education or chooses to attend a county
25 college, the qualified beneficiary may convert the ¹[average]
26 maximum¹ number of credit hours required for the conferral of an
27 associate degree from a university plan to a county college plan and
28 may retain the remaining credit hours in the university plan or may
29 request a refund for prepaid credit hours in excess of the ¹[average]
30 maximum¹ number of credit hours required for the conferral of an
31 associate degree. Each qualified beneficiary shall be classified as a
32 resident for tuition purposes regardless of his actual legal residence
33 ¹ during the period in which benefits under the program are being
34 utilized¹.

35 b. In addition to the plans required pursuant to subsection a. of
36 this section, the board may make advance payment contracts available
37 for other plans, such as the county college plus university plan
38 whereby the advance payment contract would provide tuition that
39 would allow a qualified beneficiary to attend a county college for an
40 associate degree and then attend a four-year public institution of
41 higher education for a baccalaureate degree.

42 c. The board shall establish procedures for conversions between
43 plans established under the program. The procedures shall include, but
44 not be limited to, the conditions under which a conversion may occur
45 and the method for calculating any refund due.

46 d. A qualified beneficiary may apply a county college plan or a

1 university plan toward any eligible independent institution of higher
2 education. The board shall transfer or cause to have transferred to the
3 eligible independent institution of higher education designated by the
4 qualified beneficiary an amount not to exceed the weighted average
5 tuition purchased under the advance payment contract. In the event
6 that the cost of tuition at the eligible independent institution of higher
7 education is less than the weighted average tuition purchased under
8 the advance payment contract, the amount transferred shall not exceed
9 the actual cost of tuition. A transfer authorized pursuant to this
10 subsection shall not exceed the number of credit hours contracted on
11 behalf of a qualified beneficiary.

12 e. A qualified beneficiary may apply the benefits of an advance
13 payment contract toward an eligible out-of-state institution of higher
14 education. Institutional eligibility for out-of-state institutions of
15 higher education shall be determined by the board, but in making
16 those determinations the board shall recognize that the benefits may
17 only be used at an out-of-state institution of higher education whose
18 students are eligible to receive benefits under section 529 of the
19 federal Internal Revenue Code of 1986, 26 U.S.C. s.529. The board
20 shall transfer or cause to have transferred to the eligible out-of-state
21 institution of higher education designated by the qualified beneficiary
22 an amount not to exceed the weighted average tuition purchased under
23 the advance payment contract. In the event that the cost of tuition at
24 the eligible out-of-state institution of higher education is less than the
25 weighted average tuition purchased under the advance payment
26 contract, the amount transferred shall not exceed the actual cost of
27 tuition. A transfer authorized pursuant to this subsection shall not
28 exceed the number of credit hours contracted on behalf of a qualified
29 beneficiary.

30

31 11. (New section) a. The board shall determine the conditions
32 under which refunds are payable under the program. Unless
33 authorized by the board or under the provisions of this section, a
34 refund shall not exceed the amount paid into the fund by the
35 purchaser. A refund may exceed the amount paid into the fund in the
36 following circumstances:

37 (1) if the qualified beneficiary is awarded a scholarship (or
38 allowance or payment described in subparagraph (B) or (C) of
39 paragraph (1) of subsection (d) of section 135 of the federal Internal
40 Revenue Code of 1986, 26 U.S.C. s.135), the terms of which cover
41 the benefits included in the advance payment contracts, moneys paid
42 for the purchase of the advance payment contracts ¹[shall] may¹ be
43 returned to the purchaser in enrollment period installments coinciding
44 with the matriculation by the qualified beneficiary in amounts equal to
45 the lesser of the original purchase price plus 5% interest compounded
46 annually, or the weighted average tuition purchased under the advance

1 payment contract; and

2 (2) in the event of the death or disability of the qualified
3 beneficiary, moneys paid for the purchase of advance payment
4 contracts shall be returned to the purchaser together with 5% interest
5 compounded annually.

6 b. A refund shall not be authorized through an advance payment
7 contract for any school year partially attended but not completed. For
8 purposes of this subsection, a school year partially attended but not
9 completed means any one enrollment period whereby the student is
10 still enrolled at the conclusion of the official drop-add period, but
11 withdraws before the end of the enrollment period.

12 c. If a qualified beneficiary does not complete a county college
13 plan or university plan, for reasons other than specified in subsection
14 a. of this section, the purchaser shall receive a refund of the amount
15 paid into the fund for the remaining unattended years of the advance
16 payment contract pursuant to rules promulgated by the board and in
17 accordance with the provisions of section 529 of the federal Internal
18 Revenue Code of 1986, 26 U.S.C. s.529.

19

20 12. (New section) Moneys paid into or out of the fund by or on
21 behalf of a purchaser or qualified beneficiary of an advance payment
22 contract for the purposes of financing the cost of qualified higher
23 education expenses under the program are exempt from all claims of
24 creditors of the purchaser or the beneficiary.

25

26 13. (New section) The State or any State agency, county,
27 municipality, or other political subdivision may, by contract or
28 collective bargaining agreement, agree with any employee to remit
29 payments toward advance payment contracts through payroll
30 deductions made by the appropriate officer or officers of the State,
31 State agency, county, municipality, or political subdivision. The
32 payments shall be held and administered in accordance with this act.

33

34 14. (New section) In order to meet the obligations of the board
35 under this act, there shall be paid to the board for deposit in the fund,
36 at the time of distribution, subject to appropriation, such sum, if any,
37 as shall be certified by the chair of the board as necessary to provide
38 that amount at the time of distribution. The chair shall make and
39 deliver to the Governor, or his designee, the certificate stating the
40 sums, if any, required to make available in the fund the amount
41 aforesaid, and the sums so certified shall be appropriated and paid to
42 the board during the then current State fiscal year.

43

44 15. (New section) In the event that the State Treasurer
45 determines the program to be financially infeasible, the State may
46 discontinue the provision of the program. A qualified beneficiary who

1 has been accepted by and is enrolled or is within five years of
2 enrollment in an institution of higher education shall be entitled to
3 exercise the benefits for which he has contracted. All other contract
4 holders shall receive a refund of the amount paid into the fund ¹[, plus
5 interest at the prevailing rate]¹.

6
7 16. (New section) a. A qualified beneficiary who graduates from
8 high school with a 3.0 cumulative grade point average on a 4.0 scale
9 in an academic program or a 3.2 cumulative grade point average on a
10 4.0 scale in a vocational-educational program, based upon grades in
11 core curriculum content subject areas as determined by the board, or
12 who graduates in the top 15% of his high school graduating class shall
13 be admitted to a public institution of higher education. In order to be
14 admitted to a public institution of higher education pursuant to this
15 section, the qualified beneficiary shall meet all of the institution's
16 requirements for admittance. This provision shall not be construed to
17 promise or guarantee that a qualified beneficiary shall be admitted to
18 a particular public institution of higher education.

19 b. In order to effectuate the provisions of subsection a. of this
20 section, the board, in consultation with the Commission on Higher
21 Education, shall develop a process to assist qualified beneficiaries in
22 applying to all public institutions of higher education.

23
24 17. (New section) Moneys paid into or out of an account by or
25 on behalf of a contributor or designated beneficiary for the purposes
26 of financing the cost of qualified higher education expenses under the
27 New Jersey Better Educational Savings Trust (NJBEST) Program, are
28 exempt from all claims of creditors of the contributor or the
29 designated beneficiary.

30
31 18. N.J.S.18A:71B-36 is amended to read as follows:

32 18A:71B-36. As used in this article:

33 "Account" means an individual trust account or savings account
34 established in accordance with this article;

35 ["Authority" means the Higher Education Student Assistance
36 Authority;]

37 "Board" means the Prepaid Higher Education Expense Board
38 established pursuant to section 6 of P.L. , c. (C.)(now pending
39 before the Legislature as this bill).

40 "Contributor" means the person or organization contributing to and
41 maintaining an account and having the right to withdraw funds from
42 the account before the account is disbursed to or for the benefit of the
43 designated beneficiary;

44 "Designated beneficiary" means: a. the individual designated at the
45 time the account is opened as the individual whose higher education
46 expenses are expected to be paid from the account; b. the replacement

1 beneficiary if the change in designated beneficiary would not result in
2 a distribution that is included in federal gross income under section
3 529 of the federal Internal Revenue Code of 1986, 26 U.S.C.s.529;
4 and c. in the case of an interest in the program purchased by a state or
5 local government or an organization described in paragraph (3) of
6 subsection (c) of section 501 of the federal Internal Revenue Code of
7 1986, 26 U.S.C.s.501 and exempt from taxation under subsection (a)
8 of section 501 of the federal Internal Revenue Code of 1986,
9 26 U.S.C.s.501, as a part of a scholarship program operated by the
10 government or organization, the individual receiving the interest as a
11 scholarship;

12 "Higher education institution" means an eligible educational
13 institution as defined in or for purposes of section 529 of the federal
14 Internal Revenue Code of 1986, 26 U.S.C.s.529. Higher education
15 institution shall include a proprietary institution if expenses for tuition
16 at the institution would be considered qualified higher education
17 expenses under section 529 of the federal Internal Revenue Code of
18 1986, 26 U.S.C.s.529, but only for degree granting programs licensed
19 or approved by the Commission on Higher Education or for other
20 proprietary institutions as determined by the [authority] board;

21 "Investment Manager" means the Division of Investment in the
22 Department of the Treasury or the private entities authorized to do
23 business in this State that may be designated by the [authority] board
24 to invest the funds of the trust pursuant to the terms of this article;

25 "Member of the family" means a member of the family as defined in
26 or for purposes of section 529 of the federal Internal Revenue Code
27 of 1986, 26 U.S.C.s.529;

28 "Nonqualified withdrawal" means a withdrawal from an account
29 other than: a. a qualified withdrawal; b. a withdrawal made as the
30 result of the death or disability of the designated beneficiary of an
31 account; c. a withdrawal made on account of a scholarship (or
32 allowance or payment described in subparagraph (B) or (C) of
33 paragraph (1) of subsection (d) of section 135 of the federal Internal
34 Revenue Code of 1986, 26 U.S.C.s.135) received by the designated
35 beneficiary, but only to the extent of the amount of that scholarship,
36 allowance or payment; d. a rollover or change in designated
37 beneficiary which would not result in a distribution includible in
38 federal gross income under section 529 of the federal Internal Revenue
39 Code of 1986, 26 U.S.C.s.529; or e. any other withdrawal if the failure
40 of the program to impose a more than de minimis penalty on the
41 withdrawal would cause the program not to be a qualified State tuition
42 program under section 529 of the federal Internal Revenue Code of
43 1986, 26 U.S.C.s.529;

44 "Program" means the "New Jersey Better Educational Savings Trust
45 (NJBEST) Program" established pursuant to this article;

46 "Qualified higher education expenses" means expenses described in

1 paragraph (3) of subsection (e) of section 529 of the federal Internal
2 Revenue Code of 1986, 26 U.S.C.s.529 incurred in connection with
3 the enrollment of a designated beneficiary at a higher education
4 institution;

5 "Qualified withdrawal" means a withdrawal from an account to pay
6 the qualified higher education expenses of the designated beneficiary
7 of the account; but a withdrawal shall not be considered a qualified
8 withdrawal if the failure of the program to impose a more than de
9 minimis penalty on the withdrawal would cause the program not to
10 qualify as a qualified State tuition program under section 529 of the
11 federal Internal Revenue Code of 1986, U.S.C.s.529;

12 "Trust" means the "New Jersey Better Educational Savings Trust"
13 established pursuant to N.J.S.18A:71B-37.

14 (cf: N.J.S.18A:71B-36)

15

16 19. N.J.S.18A:71B-37 is amended to read as follows:

17 18A:71B-37. There is created within the [Higher Education
18 Student Assistance Authority] Prepaid Higher Education Expense
19 Board the New Jersey Better Educational Savings Trust (NJBEST).
20 The trust shall provide a mechanism through which the [authority]
21 board, as trustee, holds accounts established and maintained pursuant
22 to the provisions of this article to finance the cost of qualified higher
23 education expenses.

24 (cf: N.J.S.18A:71B-37)

25

26 20. N.J.S.18A:71B-38 is amended to read as follows:

27 18A:71B-38. The [Higher Education Student Assistance Authority]
28 Prepaid Higher Education Expense Board established pursuant to
29 section 6 of P.L. , c. (C.)(now pending before the Legislature
30 as this bill) shall administer the NJBEST Program. The [authority]
31 board shall have the power to:

32 a. serve as trustee of the trust;

33 b. adopt rules and regulations pursuant to the "Administrative
34 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), necessary to
35 carry out the provisions of this article;

36 c. prescribe and provide appropriate forms for participation in the
37 program;

38 d. select an investment manager and any other contractors needed
39 to manage and market the program;

40 e. monitor the investment manager and any other contractors by
41 audits and other reports;

42 f. collect reasonable administrative fees in connection with any
43 contract or transaction relating to the program;

44 g. impose penalties for nonqualified withdrawals;

45 h. take all actions required so that the program is treated as a
46 qualified State tuition program under section 529 of the federal

1 Internal Revenue Code of 1986, 26 U.S.C.s.529; and
2 i. perform any other acts which may be deemed necessary or
3 appropriate to carry out the objects and purposes of this article.
4 (cf: N.J.S.18A:71B-38)

5
6 21. N.J.S.18A:71B-39 is amended to read as follows:

7 18A:71B-39. Neither the members of the [authority] board, nor
8 any officer or employee of the [authority] board shall be liable
9 personally for the debts, liabilities or obligations of the program
10 established pursuant to this article.
11 (cf: N.J.S.18A:71B-39)

12
13 22. N.J.S.18A:71B-40 is amended to read as follows:

14 18A:71B-40. a. The [authority] board shall select an investment
15 manager or managers to invest the funds of the trust or the funds in
16 accounts. In making this selection, any investment manager shall be
17 subject to the "prudent person" standard of care applicable to the
18 Division of Investment in the Department of the Treasury pursuant to
19 subsection b. of section 11 of P.L.1950, c.270 (C.52:18A-89), and the
20 [authority] board shall consider the impact of fees and costs imposed
21 by the manager or managers on yield to contributors.

22 b. The [authority] board may select more than one investment
23 manager and investment instrument for the program if it is in the best
24 interest of contributors and will not interfere with the administration
25 of the program.

26 c. The [authority] board may provide a contributor with a choice
27 of investment managers or investment instruments or both for the
28 program if both of the following conditions exist:

29 (1) the federal Internal Revenue Service has provided guidance that
30 providing a contributor with a choice of investment managers or
31 instruments under a State tuition program will not cause the program
32 to fail to qualify for favorable tax treatment under section 529 of the
33 federal Internal Revenue Code of 1986, 26 U.S.C.s.529; and

34 (2) the [authority] board concludes that a choice of investment
35 managers or of investment instruments is in the best interest of
36 contributors and will not interfere with the administration of the
37 program.

38 d. If the [authority] board terminates the designation of an
39 investment manager to hold accounts, and accounts must be moved
40 from that investment manager to another investment manager, the
41 [authority] board shall select the investment manager and type of
42 investment instrument to which the balance of the account is moved,
43 unless the federal Internal Revenue Service provides guidance that
44 allowing the contributor to select among several investment managers
45 or investment instruments that have been selected by the [authority]

1 board would not cause a program to cease to be a qualified State
2 tuition program for the purposes of section 529 of the federal Internal
3 Revenue Code, 26 U.S.C.s.529.

4 e. The board, upon the effective date of P.L. , c. (C.)(now
5 pending before the Legislature as this bill) and in accordance with the
6 provisions of P.L.1954, c.48 (C.52:34-6 et seq.), shall select an
7 investment manager or managers for the program. If the selection
8 process provided for in this subsection results in an investment
9 manager other than the Division of Investment, the board shall provide
10 for the orderly transfer of accounts and shall ensure that all the rights
11 of the contributors and designated beneficiaries participating in the
12 program as of the effective date of P.L. , c. (C.)(now pending
13 before the Legislature as this bill), are protected.

14 (cf: N.J.S.18A:71B-40)

15
16 23. N.J.S.18A:71B-41 is amended to read as follows:

17 18A:71B-41. a. The program shall be operated as a trust through
18 the use of accounts for designated beneficiaries. An account may be
19 opened by any person who desires to save to pay the qualified higher
20 education expenses of an individual by satisfying each of the following
21 requirements:

22 (1) completing an application in the form prescribed by the
23 **[authority] board**;

24 (2) paying the one-time application fee established by the
25 **[authority] board**;

26 (3) making the minimum contribution required by the **[authority]**
27 **board** for opening an account;

28 (4) designating the account or accounts to be opened; and

29 (5) in the case of an account to which subsection a. of
30 N.J.S.A.18A:71B-44 would apply, demonstrating to the satisfaction
31 of the **[authority] board** that either the contributor, if an individual, or
32 the designated beneficiary is a New Jersey resident. The requirement
33 of New Jersey residency for either the contributor or the designated
34 beneficiary would not apply to an account to which subsection b. of
35 N.J.S.18A:71B-44 would apply unless otherwise determined by the
36 **[authority] board**.

37 b. Except as provided under N.J.S.18A:71B-42, only the
38 contributor may make contributions to an account after the account is
39 opened.

40 c. Contributions to accounts shall be made only in cash, as defined
41 by the **[authority] board** pursuant to regulations, in accordance with
42 section 529 of the federal Internal Revenue Code of 1986, 26
43 U.S.C.s.529.

44 d. Contributors may withdraw all or part of the balance from an
45 account on sixty days' notice or a shorter period, as may be authorized
46 by the **[authority] board** pursuant to regulations.

1 e. A contributor may change the designated beneficiary of an
2 account or rollover all or a portion of an account to another account
3 if the change or rollover would not result in a distribution includible
4 in gross income under section 529 of the federal Internal Revenue
5 Code of 1986, 26 U.S.C.s.529, in accordance with procedures
6 established by the [authority] board.

7 f. In the case of any nonqualified withdrawal, a penalty at a level
8 established by the [authority] board and sufficient to be considered a
9 more than de minimis penalty for purposes of section 529 of the
10 federal Internal Revenue Code of 1986, 26 U.S.C.s.529, shall be
11 withheld and paid to the [authority] board for use in operating and
12 marketing the program. The [authority] board may elect not to
13 impose a penalty if that section ceases to include a provision requiring
14 more than de minimis penalties for a program to qualify as a qualified
15 State tuition program.

16 g. If a contributor makes a nonqualified withdrawal and a penalty
17 amount is not withheld pursuant to subsection f. of this section or the
18 amount withheld is less than the amount required to be withheld under
19 that subsection, the contributor shall pay the unpaid portion of the
20 penalty to the [authority] board at the same time that the contributor
21 files a State income tax return for the taxable year of the withdrawal,
22 or if the contributor does not file a return, the unpaid portion of the
23 penalty shall be paid on or before the due date for the filing of that
24 income tax return.

25 h. Each account shall be maintained separately from each other
26 account under the program.

27 i. Separate records and accounting shall be maintained for each
28 account for each designated beneficiary.

29 j. A contributor to or designated beneficiary of any account shall
30 not direct the investment of any contributions to an account or the
31 earnings from the account, except as permitted under section 529 of
32 the federal Internal Revenue Code of 1986, 26 U.S.C.s.529.

33 k. A contributor or a designated beneficiary shall not use an
34 interest in an account as security for a loan. Any pledge of an interest
35 in an account is of no force and effect.

36 l. The maximum contribution for any designated beneficiary shall
37 be determined by the [authority] board pursuant to regulations, in
38 accordance with section 529 of the federal Internal Revenue Code of
39 1986, 26 U.S.C.s.529.

40 m. Statements, reports on distributions and information returns
41 relating to accounts shall be prepared, distributed, and filed to the
42 extent required by section 529 of the federal Internal Revenue Code
43 of 1986, 26 U.S.C.s.529, or regulations issued thereunder.

44 n. The [authority] board may charge, impose and collect
45 reasonable administrative fees and service charges in connection with
46 any agreement, contract or transaction relating to the program. These

1 fees and charges may be imposed directly on contributors or may be
2 taken as a percentage of the investment earnings on accounts.

3 o. The State or any State agency, municipality, or other political
4 subdivision may, by contract or collective bargaining agreement, agree
5 with any employee to remit contributions to accounts through payroll
6 deductions made by the appropriate officer or officers of the State,
7 State agency, county, municipality, or political subdivision. The
8 contributions shall be held and administered in accordance with this
9 act.

10 (cf: N.J.S.18A:71B-41)

11

12 24. N.J.S.18A:71B-42 is amended to read as follows:

13 18A:71B-42. a. An amount of no less than \$500 shall be provided
14 by the State for the qualified higher education expenses of a
15 designated beneficiary at the time of a qualified withdrawal provided
16 that:

17 (1) the contributor demonstrates, to the satisfaction of the
18 [authority] board, that the contributor participated in the program for
19 at least four years by making a qualifying minimum initial deposit or
20 qualifying minimum annual contributions, or both, as shall be
21 determined by the [authority] board, for a designated beneficiary;

22 (2) the designated beneficiary demonstrates, to the satisfaction of
23 the [authority] board, attendance or enrollment in a higher education
24 institution in this State, at the time of initial attendance or enrollment
25 in the higher education institution; and

26 (3) either the contributor, if an individual, or the designated
27 beneficiary demonstrates, to the satisfaction of the [authority] board,
28 that the contributor or designated beneficiary is a New Jersey resident.

29 b. The amount provided under subsection a. of this section shall
30 meet the requirements of a qualified scholarship within the meaning of
31 section 117 of the federal Internal Revenue Code of 1986,
32 26 U.S.C.s.117, for a designated beneficiary satisfying the
33 requirements of subsection a. of this section.

34 c. A designated beneficiary shall not receive more than one State
35 scholarship provided pursuant to subsection a. of this section.

36 (cf: N.J.S.18A:71B-42)

37

38 25. N.J.S.18A:71B-43 is amended to read as follows:

39 18A:71B-43. Annually, the [authority] board shall determine a
40 dollar amount of an account, which shall not be less than \$25,000,
41 which shall not be considered in evaluating the financial needs of a
42 student enrolled in an institution of higher education located in the
43 State of New Jersey, or be deemed a financial resource or a form of
44 financial aid or assistance to a student, for purposes of determining the
45 eligibility of a student for any scholarship, grant, or monetary
46 assistance awarded by the State; nor shall the amount of any account
47 as determined by the [authority] board provided for a designated

1 beneficiary under this article reduce the amount of any scholarship
2 grant or monetary assistance which the student is entitled to be
3 awarded by the State.

4 (cf: N.J.S.18A:71B-43)

5

6 26. N.J.S.18A:71B-44 is amended to read as follows:

7 18A:71B-44. a. If the investment manager is the Division of
8 Investment in the Department of the Treasury, in order to assure the
9 availability of principal of any amount contributed under this article,
10 there shall be paid to the [authority] board for deposit in the trust, at
11 the time of distribution, subject to appropriation, such sum, if any, as
12 shall be certified by the [chairperson] chair of the [authority] board
13 as necessary to provide that amount at the time of distribution. The
14 [chairperson] chair shall make and deliver to the Governor, or his
15 designee, the certificate stating the sums, if any, required to make
16 available in the trust the amount aforesaid, and the sums so certified
17 shall be appropriated and paid to the [authority] board during the then
18 current State fiscal year.

19 b. If the investment manager is a private entity, the investment of
20 the principal and interest of any amount contributed under this article
21 shall be ¹[backed by the full faith and credit of the United States or be
22 fully insured by the Federal Deposit Insurance Corporation or other
23 similar insurer backed by the full faith and credit of the United States.
24 No account balance shall exceed the maximum amount of insurance
25 provided by the insurer. No investment is permitted in derivatives of
26 eligible securities, and any investment must be designed to balance
27 prospective payments according to the guidelines established] made
28 in accordance with an investment plan approved by the State
29 Investment Council in the Division of Investment¹.

30 (cf: N.J.S.18A:71B-44)

31

32 27. N.J.S.18A:71B-45 is amended to read as follows:

33 18A:71B-45. a. Nothing in this article shall be construed to:

34 (1) guarantee that a designated beneficiary will be admitted to a
35 higher education institution or be allowed to continue enrollment at or
36 graduate from a higher education institution after admission;

37 (2) establish State residency for a person merely because the person
38 is a designated beneficiary; or

39 (3) guarantee that amounts saved pursuant to the program will be
40 sufficient to cover the qualified higher education expenses of a
41 designated beneficiary.

42 b. Nothing in this article establishes any obligation of this State or
43 any agency or instrumentality of this State to guarantee for the benefit
44 of any contributor or designated beneficiary any of the following:

45 (1) the rate of interest or other return on any account; or

46 (2) the payment of interest or other return on any account.

47 c. Nothing in this article establishes any obligation or liability of

1 this State or any agency or instrumentality of this State with respect
2 to any federal or State tax liability of any contributor or designated
3 beneficiary in this program.

4 d. Under regulations promulgated by the [authority] board, every
5 contract and application that may be used in connection with a
6 contribution to an account shall clearly indicate that the account is not
7 insured by this State nor is the investment return guaranteed by this
8 State.

9 (cf: N.J.S.18A:71B-45)

10
11 28. N.J.S.18A:71B-46 is amended to read as follows:

12 18A:71B-46. If the Congress of the United States enacts legislation
13 that exempts educational savings accounts from federal income
14 taxation, sections N.J.S.18A:71B-42 and N.J.S.18A:71B-43 shall
15 apply with respect to such educational savings accounts as if they were
16 accounts established under this act and the beneficiaries of the
17 accounts were designated beneficiaries subject to the approval of the
18 [New Jersey Higher Education Assistance Authority] board.

19 (cf: N.J.S.18A:71B-46)

20
21 29. (New section) Regulations adopted by the New Jersey Higher
22 Education Student Assistance Authority pertaining to the New Jersey
23 Better Educational Savings Trust (NJBEST) Program shall continue
24 with full force and effect under the board for a period of one year from
25 the effective date of this act or until amended, continued or repealed
26 by the board pursuant to law.

27
28 30. Section 13 of P.L.1997, c.237 (C.54A:6-25) is amended to
29 read as follows:

30 13. a. Gross income shall not include earnings on an education
31 individual retirement account or a qualified State tuition program
32 account until the earnings are distributed from the account, at which
33 time they shall be includible in the gross income of the distributee
34 except as provided in this section.

35 b. Gross income shall not include qualified distributions as defined
36 in paragraph (3) of subsection c. of this section.

37 c. For purposes of this section:

38 (1) "Education individual retirement account" means an education
39 retirement account as defined pursuant to paragraph (1) of subsection
40 (b) of section 530 of the federal Internal Revenue Code of 1986,
41 26 U.S.C. s.530.

42 (2) "Qualified State tuition program account" means an account
43 established pursuant to the "New Jersey Better Educational Savings
44 Trust (NJBEST) Program," (N.J.S.18A:71B-35 et seq.) , an account
45 established pursuant to the "New Jersey Prepaid Higher Education
46 Expense Program,"(P.L. , c. (C.))(now pending before the
47 Legislature as this bill) or an account established pursuant to any

1 qualified State tuition program, as defined pursuant to subsection (b)
2 of section 529 of the federal Internal Revenue Code of 1986,
3 26 U.S.C. s.529 or a tuition credit or certificate purchased pursuant to
4 any such program.

5 (3) "Qualified distribution" means any of the following:

6 (a) a distribution from a qualified State tuition program account
7 that is used for qualified higher education expenses as defined pursuant
8 to paragraph (3) of subsection (e) of section 529 of the federal Internal
9 Revenue Code of 1986, 26 U.S.C. s.529;

10 (b) a rollover from one account to another account as described in
11 clause (i) of subparagraph (C) of paragraph (3) of subsection (c) of
12 section 529 or paragraph (5) of subsection (d) of section 530 of the
13 federal Internal Revenue Code of 1986, 26 U.S.C. s.529 or 530;

14 (c) a change in designated beneficiaries of an account as described
15 in clause (ii) of subparagraph (C) of paragraph (3) of subsection (c) of
16 section 529 or paragraph (6) of subsection (d) of section 530 of the
17 federal Internal Revenue Code of 1986, 26 U.S.C. s.529 or 530;

18 d. The portion of a distribution from an education individual
19 retirement account or a qualified State tuition program account that is
20 attributable to earnings shall be determined in accordance with the
21 principles of section 72 of the federal Internal Revenue Code of 1986,
22 26 U.S.C. s.72, as applied for purposes of sections 529 and 530 of the
23 federal Internal Revenue Code of 1986, 26 U.S.C. ss.529 and 530.

24 (cf: P.L.1999, c.116, s.1)

25

26 31. There is appropriated from the General Fund to the Prepaid
27 Higher Education Expense Board in, but not of, the Department of
28 State \$250,000 to effectuate the provisions of this act.

29

30 32. This act shall take effect immediately.

LEGISLATIVE FISCAL ESTIMATE
[FIRST REPRINT]
ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 1622 and A2296
STATE OF NEW JERSEY
209th LEGISLATURE

DATED: MARCH 21, 2001

SUMMARY

Synopsis: Establishes New Jersey Prepaid Higher Education Expense Program.
Type of Impact: General Fund expenditure increase.
Agencies Affected: Department of State; Higher Education Student Assistance Authority.

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Cost	Indeterminate-See Comments Below		

- ! The Assembly Committee Substitute (1R) for Assembly Bill Nos. 1622 and 2296 of 2000 establishes the New Jersey Prepaid Higher Education Expense Program to provide a mechanism through which the cost of college tuition may be paid in advance of enrollment in an institution of higher education at a rate lower than the cost at the time of actual enrollment. The program will be administered by a Prepaid Higher Education Expense Board also established under the bill. This bill also shifts the responsibility for the administration of the New Jersey Better Educational Savings Trust (NJBEST) Program from the Higher Education Student Assistance Authority to the Prepaid Higher Education Expense Board.
- ! It is not possible to ascertain the potential cost of this program due to various factors. However, according to information received from the Higher Education Student Assistance Authority, start-up costs for the program could be at least \$500,000. This estimate includes the salary of an executive director, one professional staff person, one secretarial staff person, rental expenses and initial program marketing costs. This bill includes an appropriation of \$250,000 to finance the program's start-up costs.
- ! Since the enactment of the "Higher Education Restructuring Act of 1994," P.L. 1994, c.48, tuition and fees are established solely by the boards of trustees at the institutions of higher education. Under the bill, the State will assume a financial liability if the actual cost of higher education at the time of enrollment exceeds the earnings on the contributions of participants. The bill stipulates that in the event the State Treasurer determines the program to be financially infeasible, the State may discontinue the program. However, the State does retain a limited financial liability by assuring that a qualified beneficiary who has been accepted by,

or is enrolled, or is within five years of enrollment, in an institution of higher education would be entitled to exercise the contracted benefits. All other contract holders would receive a refund of the amount paid into the fund. However, the Assembly Committee Substitute (1R) of Assembly Bills Nos. 1622 and 2296 would empower the Prepaid Higher Education Expense Board to limit the length of time within which all qualified beneficiaries would be required to begin exercising program benefits. The board also would have the authority to limit the total amount of time permitted to exercise those program benefits.

BILL DESCRIPTION

The Assembly Committee Substitute (1R) for Assembly Bill Nos. 1662 and 2296 of 2000 establishes the New Jersey Prepaid Higher Education Expense Program to provide a mechanism through which the cost of tuition may be paid in advance of enrollment in an institution of higher education at a rate lower than the cost at the time of actual enrollment. The bill provides for the creation of an eleven member Prepaid Higher Education Expense Board in, but not of, the Department of State to administer the program. The board is authorized to appoint an executive director to serve as the chief administrative and operational officer of the board; to make and enter into all contracts and agreements necessary for the performance of its duties; and employ personnel, including financial and computer experts, legal counsel, accountants, managers and auditors as may be necessary. The board is also authorized to establish a comprehensive investment plan for the program and may enter into a contract with a designated entity to oversee the administration of the plan. The investment plan will specify the investment policies to be utilized by the board in its administration of the prepaid Higher Education Expense Trust Fund.

Under the program, a purchaser may enter into an advance payment contract to purchase a specific number of credit hours on behalf of a beneficiary. Funds remitted in accordance with advance payment contracts will be deposited into the Prepaid Higher Education Expense Trust Fund and invested in a manner that yields, at a minimum, sufficient interest to generate the difference between the prepaid amount and the average cost of tuition at a public institution of higher education when the benefits are exercised. The board would be required to make available, at a minimum, advance payment contracts for two independent plans-the county college plan and the university plan.

The bill guarantees that in the event that the moneys in the trust fund are insufficient to offset the obligations of the board, then the State will meet those obligations. As a measure of protection for the State, the State Treasurer may discontinue the program if it is determined that the program is financially infeasible. Under these conditions, a qualified beneficiary who has been accepted by, or is enrolled, or is within five years of enrollment, in an institution of higher education will be entitled to exercise the benefits for which he has contracted. All other contract holders will receive a refund of the amount paid into the fund. However, the Assembly Committee Substitute (1R) of Assembly Bills Nos. 1622 and 2296 would empower the Prepaid Higher Education Expense Board to limit the length of time within which all qualified beneficiaries would be required to begin exercising program benefits. The board also would have the authority to limit the total amount of time permitted to exercise those program benefits.

The bill amends the State tax code to specifically include the New Jersey Prepaid Higher Education Expense Program as a qualified State tuition program under which the earnings are not included in gross income until they are distributed from the account. This provision mirrors the tax treatment given to contributions made under the NJBEST Program.

The bill also amends the law establishing the New Jersey Better Educational Savings Trust (NJBEST) Program. The responsibility for the program's administration would be shifted from the Higher Education Student Assistance Authority to the Prepaid Higher Education Expense Board. The bill provides that the board must, after the bill's effective date, select an investment manager for NJBEST pursuant to the provisions of the State public contracting law. Currently, the Division of Investment serves as the investment manager for NJBEST. In the event that the investment manager changes due to this provision, the board must provide for the orderly transfer of accounts and must ensure that all the rights of the contributors and designated beneficiaries are protected.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The Office of Legislative Services (OLS) cannot estimate the additional cost that the State would incur for the establishment of the New Jersey Prepaid Higher Education Expense Program. The following, however, are the elements which will impact State costs for the program:

START-UP COSTS - The Higher Education Student Assistance Authority estimates that the initial start-up costs for the Prepaid Higher Education Expense Program will be a minimum of \$500,000. This estimate includes the salary of an executive director, one professional staff person, one secretarial staff person, rental expenses and initial program marketing costs. The bill includes an appropriation of \$250,000 to finance the program's start-up costs.

OPERATIONAL COSTS - The bill charges the Prepaid Higher Education Expense Board with the operation of both the Prepaid Higher Education Expense Program and NJBEST. While in FY2001 the Higher Education Assistance Authority receives a \$750,000 appropriation to administer NJBEST, it is difficult to determine the amount of operational funds which will be required to administer both programs. While NJBEST is being administered by an existing State agency, the creation of a new State entity will initially entail some additional costs. The program may require staff in addition to those positions funded through the start-up appropriation.

The board is charged with the development of an investment plan for the program and is authorized to delegate responsibility for the administration of that plan. The board is authorized to contract with a private corporation or institution to provide the services necessary to implement the plan including consolidated billing, record keeping and accounting, and asset purchase, control and safekeeping. The overall operational costs of the program will obviously be dependent on the contract prices negotiated by the board for the above and other necessary services. Presumably some of these costs will be offset by the administrative fees which the board is authorized to collect from purchasers.

The board is also directed under the bill to solicit bids for an investment manager for the NJBEST Program. Currently, the Division of Investment in the Department of Treasury acts as the NJBEST investment manager. If the bidding process results in an entity other than the division being selected as the investment manager, this could represent an additional cost to the

program, although again these costs could be offset by administrative fees charged to purchasers.

POTENTIAL STATE LIABILITY - Under the bill, moneys remitted by purchasers for advance payment contracts will be combined and deposited into the Prepaid Higher Education Expense Trust Fund and invested in a manner that yields, at a minimum, the difference between the prepaid amount and the average in-state tuition cost at the public institutions of higher education. Since the enactment of the "Higher Education Restructuring Act of 1994," P.L.1994, c.48, tuition and fees are set by each individual institution's board of trustees and the State has no authority to limit increases. Should future increases in tuition be greater than the earnings on the investment of trust funds, the State will face a future liability in meeting the guaranteed higher education expenses of program beneficiaries. This liability is limited by the fact that the State Treasurer may discontinue the program if he determines it to be financially infeasible. In that case the State would only be required to meet the expenses of a beneficiary who has been accepted by, or is enrolled, or is within five years of enrollment, in an institution of higher education. All other contract holders would receive a refund of the amount paid into the fund, plus interest at the prevailing rate.

Finally, the Assembly Committee Substitute (1R) of Assembly Bills Nos. 1622 and 2296 would empower the Prepaid Higher Education Expense Board to limit the length of time within which all qualified beneficiaries would be required to begin exercising program benefits. The board also would have the authority to limit the total amount of time permitted to exercise those program benefits.

Section: *Education*

Analyst: *Cindy Grant*
Assistant Fiscal Analyst

Approved: *Alan R. Kooney*
Legislative Budget and Finance Officer

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.

SENATE EDUCATION COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 1622 and 2296

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 15, 2001

The Senate Education Committee reports favorably Assembly Bill Nos. 1622 and 2296 with committee amendments.

As amended, this bill establishes the New Jersey Prepaid Higher Education Expense Program to provide a mechanism through which the cost of tuition may be paid in advance of enrollment in an institution of higher education at a rate lower than the cost at the time of actual enrollment.

The bill creates the NJBEST and Prepaid Higher Education Expense Board in, but not of, the Department of State, which would consist of the State Treasurer, the executive director of the Commission on Higher Education, the executive director of the Higher Education Student Assistance Authority, the chair of the New Jersey Presidents' Council, or their designees, and seven members appointed by the Governor, who will possess knowledge, skill and experience in the areas of accounting, actuary, risk management or investment management. The board would be responsible for administering the New Jersey Prepaid Higher Education Expense Program.

The bill directs the board, with the assistance of the Office of the Attorney General, to develop an advance payment contract. The following provisions must be included in the contract:

- the amount of the payment and the number of payments required;
- the terms and conditions under which a purchaser will remit payments, including, but not limited to, the dates upon which each payment will be due;
- provisions for late payment charges and for default;
- provisions for penalty fees for withdrawals from the fund;
- the name and date of birth of the qualified beneficiary on whose behalf the contract is drawn and the terms and conditions under which another person may be substituted as the qualified beneficiary;
- the name of any person who may cancel the contract;

- the terms and conditions under which a contract may be canceled, the name of the person entitled to any refund due as a result of the cancellation, and the amount of refund, if any, due to the person named;

- the time limitations, if any, within which the qualified beneficiary must claim benefits through the program;

- the terms and conditions, if any, under which a purchaser may designate another individual as a successor owner of the contract; and

- other terms and conditions deemed by the board to be necessary or proper.

In addition to these general provisions, the bill also requires that the advance payment contract include specific provisions, including the number of credit hours contracted by the purchaser and whether the credit hours will be applied toward a four-year public institution of higher education or a county college. The advance payment contract will also include a provision obligating the board to provide to the qualified beneficiary the specified number of credit hours of undergraduate instruction at a public institution of higher education, not to exceed the maximum number of credit hours which may be purchased under the program for the associate degree or the baccalaureate degree, as appropriate.

The bill requires the board to make advance payment contracts available for two independent plans, at a minimum, to be known as the county college plan and the university plan. Through a county college plan, the advance payment contract will provide prepaid tuition for a specified number of undergraduate credit hours not to exceed the maximum number of hours which may be purchased under the program for an associate degree. Through a university plan, the advance payment contract will provide prepaid tuition for a specified number of undergraduate credit hours not to exceed the maximum number of hours which may be purchased under the program for a baccalaureate degree. The cost of participating in each of these plans will be based primarily on the average current and projected tuition within the county college system or the four-year public institutions of higher education system, respectively, and the number of years expected to elapse between the purchase of the plan and the exercise of the benefits by the qualified beneficiary.

The bill permits a county college plan or a university plan to be applied toward any independent institution of higher education. Under these circumstances, the board will transfer to these institutions an amount not to exceed the weighted average tuition purchased under the advance payment contract. If the costs at the independent institution of higher education are less than the weighted average tuition purchased under the advance payment contract, then the amount transferred may not exceed the actual cost of tuition.

The bill also permits the benefits of an advance payment contract to be applied toward an eligible out-of-state institution of higher education. Under these circumstances, the board will transfer to these

institutions an amount not to exceed the weighted average tuition purchased under the advance payment contract. If the costs at the out-of-state institution are less than the weighted average tuition purchased under the advance payment contract, then the amount transferred may not exceed the actual cost of tuition.

The bill guarantees that if the moneys in the fund are insufficient to offset the obligations of the board, then the State will meet those obligations. As a measure of protection for the State, the State Treasurer may discontinue the program if it is determined that the program is financially infeasible. Under these conditions, a qualified beneficiary who has been accepted by and is enrolled, or is within five years of enrollment, in an institution of higher education will be entitled to exercise the benefits for which the beneficiary has contracted. All other contract holders will receive a refund of the amount paid into the fund.

The bill provides that a qualified beneficiary who graduates from high school with a 3.0 cumulative grade point average on a 4.0 scale in an academic program or a 3.2 cumulative grade point average on a 4.0 scale in a vocational education program, based upon grades in core curriculum content subject areas, or who graduates in the top 15% of his high school graduating class will be admitted to a public institution of higher education. The qualified beneficiary must, however, meet all of the institution's requirements for admittance.

The bill also amends the law establishing the New Jersey Better Educational Savings Trust (NJBEST) Program. The responsibility for the program's administration is shifted from the Higher Education Student Assistance Authority to the NJBEST and Prepaid Higher Education Expense Board, which is also administering the New Jersey Prepaid Higher Education Expense Program. The bill also provides that the board must, after the effective date of the act, select an investment manager for the program pursuant to the provisions of the State public contracting law. In the event that the investment manager changes due to this provision, the board must provide for the orderly transfer of accounts and must ensure that all the rights of the contributors and designated beneficiaries are protected.

The bill also amends the State gross income tax code to specifically include the New Jersey Prepaid Higher Education Expense Program as a qualified State tuition program under which the earnings are not included in gross income until they are distributed from the account.

Committee amendments were adopted which: 1) rename the board created to administer the program the NJBEST and Prepaid Higher Education Expense Board in order to reflect its new responsibility for the NJBEST program; 2) clarify that the board will define the maximum number of credit hours that may be purchased under the program for an associate degree and a baccalaureate degree; and 3) permit a refund in the event of a conversion from the university to the county college plan that takes into account the difference in the cost of credit hours under the university plan and the county college plan.

As reported, this bill is identical to S-2054 with Senate Education Committee amendments.

[Second Reprint]

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 1622 and 2296

STATE OF NEW JERSEY
209th LEGISLATURE

ADOPTED DECEMBER 7, 2000

Sponsored by:

Assemblyman KEVIN J. O'TOOLE

District 21 (Essex and Union)

Assemblyman FRANCIS J. BLEE

District 2 (Atlantic)

Assemblyman DAVID W. WOLFE

District 10 (Monmouth and Ocean)

Assemblyman ANTHONY IMPREVEDUTO

District 32 (Bergen and Hudson)

Co-Sponsored by:

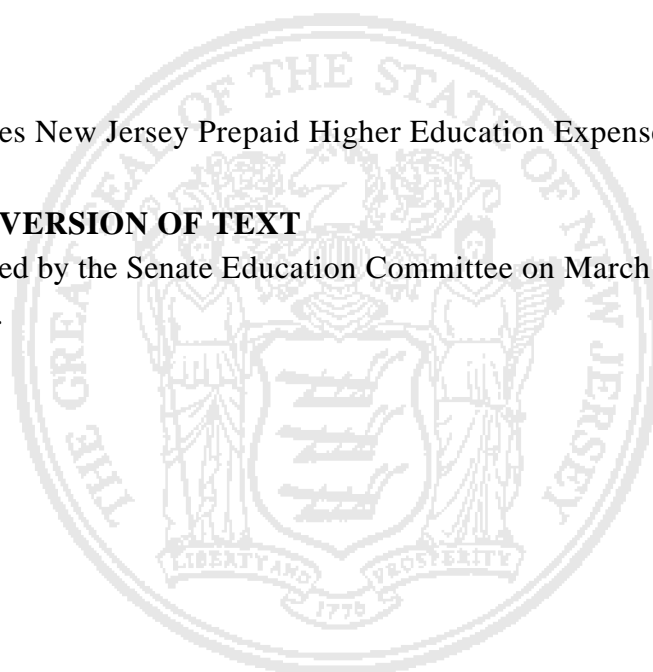
**Assemblymen Garcia, Gusciora, Assemblywoman Greenstein,
Assemblymen Steele, Stanley, Zecker, Arnone, Conaway, Assemblywoman
Previte, Assemblyman Connors, Senators Bennett, Allen, Bark and Turner**

SYNOPSIS

Establishes New Jersey Prepaid Higher Education Expense Program.

CURRENT VERSION OF TEXT

As reported by the Senate Education Committee on March 15, 2001, with amendments.



(Sponsorship Updated As Of: 6/29/2001)

1 AN ACT establishing a Prepaid Higher Education Expense Program,
2 amending and supplementing Title 18A of the New Jersey Statutes
3 and making an appropriation.

4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7

8 1. (New section) Sections 1 through 16 of this act shall be known
9 and may be cited as the "New Jersey Prepaid Higher Education
10 Expense Program Act of 2000."

11

12 2. (New section) The Legislature finds and declares: that
13 educational opportunity at the college and university level is a critical
14 State interest which is linked to the needs of the State to ensure a
15 well-educated work force; that educational opportunity is best ensured
16 through the provision of institutions of higher education which are
17 geographically and financially accessible; that it is in the best interests
18 of this State to adopt and foster mechanisms which will encourage its
19 citizens to engage in the timely financial planning which is necessary
20 to guarantee that students will have the financial resources necessary
21 to pursue a higher education given the annually escalating level of
22 resources which such attendance requires; and that one such
23 mechanism which has proven successful in some other states is the
24 establishment of a program through which ¹[many] a portion¹ of the
25 costs associated with attendance at institutions of higher education
26 may be paid in advance and fixed at a guaranteed level for the
27 duration of undergraduate enrollment.

28

29 3. (New section) As used in sections 1 through 16 of this act:
30 "Advance payment contract" means a contract entered into by the
31 board and a purchaser pursuant to the provisions of this act;

32 "Board" means the ²NJBEST and² Prepaid Higher Education
33 Expense Board established pursuant to section 6 of this act;

34 "Eligible independent institution of higher education" means those
35 institutions of higher education incorporated and located in this State,
36 which, by virtue of law or character or license, are nonprofit
37 educational institutions empowered to grant academic degrees and
38 which provide a level of education which is equivalent to the education
39 provided by the State's public institutions of higher education as
40 attested by the receipt of and continuation of regional accreditation by
41 the Middle States Association of Colleges and Schools, and which are

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly AAP committee amendments adopted February 5, 2001.

² Senate SED committee amendments adopted March 15, 2001.

1 eligible to receive State aid under the provisions of the Constitution of
2 the United States and the Constitution of the State of New Jersey and
3 whose students are eligible to receive benefits under section 529 of the
4 federal Internal Revenue Code of 1986, 26 U.S.C. s.529. ¹"Eligible
5 independent institution of higher education" shall include a proprietary
6 institution if expenses for tuition at the institution would be considered
7 qualified higher education expenses under section 529 of the federal
8 Internal Revenue Code of 1986, 26 U.S.C.s.529, but only for degree
9 granting programs licensed or approved by the Commission on Higher
10 Education or for other proprietary institutions as determined by the
11 board.¹ "Eligible independent institution of higher education" does not
12 include any educational institution dedicated primarily to the
13 preparation or training of ministers, priests, rabbis, or other
14 professional persons in the field of religion;

15 "Fund" means the Prepaid Higher Education Expense Trust Fund
16 established pursuant to section 5 of this act;

17 "Institution of higher education" means an eligible educational
18 institution as defined in or for purposes of section 529 of the federal
19 Internal Revenue Code of 1986, 26 U.S.C.s.529. ¹["Institution of
20 higher education" shall include a proprietary institution if expenses for
21 tuition at the institution would be considered qualified higher
22 education expenses under section 529 of the federal Internal Revenue
23 Code of 1986, 26 U.S.C.s.529, but only for degree granting programs
24 licensed or approved by the Commission on Higher Education or for
25 other proprietary institutions as determined by the board]¹;

26 "Program" means the New Jersey Prepaid Higher Education
27 Expense Program established pursuant to section 4 of this act;

28 "Public institution of higher education" means Rutgers, The State
29 University, the State colleges or universities established pursuant to
30 chapter 64 of Title 18A of the New Jersey Statutes, the New Jersey
31 Institute of Technology, the University of Medicine and Dentistry of
32 New Jersey, the county colleges and any other public university or
33 college now or hereafter established or authorized by State law. A
34 public institution of higher education is an institution whose students
35 are eligible to receive benefits under section 529 of the federal Internal
36 Revenue Code of 1986, 26 U.S.C. s.529;

37 "Purchaser" means a person who makes or is obligated to make
38 payments in accordance with an advance payment contract;

39 "Qualified beneficiary" means: a. a resident of this State at the
40 time a purchaser enters into an advance payment contract on behalf of
41 the resident; or b. a nonresident who is the child of a noncustodial
42 parent who is a resident of the State at the time that the noncustodial
43 parent enters into an advance payment contract on behalf of the child;

44 "Tuition" means the charges imposed by an institution of higher
45 education for enrollment at the institution. ¹The ²NJBEST and²
46 Prepaid Higher Education Expense Board shall determine whether

1 mandatory fees charged by institutions of higher education shall be
2 included in the definition of tuition.¹

3
4 4. (New section) a. There is established the New Jersey Prepaid
5 Higher Education Expense Program to provide a means for payment
6 of the costs of tuition in advance of enrollment at ¹[an] a public¹
7 institution of higher education. Moneys remitted in accordance with
8 advance payment contracts shall be combined and invested in a manner
9 that ¹[yields, at a minimum,] is intended to yield¹ sufficient interest to
10 generate the difference between the prepaid amount and the average
11 in-state tuition costs at public institutions of higher education in the
12 State at the time that the benefits are exercised. ¹The program shall
13 pay to the public institution of higher education at which the qualified
14 beneficiary is enrolled an amount equal to the institution's tuition rate
15 at the time the benefits are exercised.¹

16 b. The program shall be administered by the ²NJBEST and²
17 Prepaid Higher Education Expense Board established pursuant to
18 section 6 of this act.

19
20 5. (New section) a. There is created within the ²NJBEST and²
21 Prepaid Higher Education Expense Board the Prepaid Higher
22 Education Expense Trust Fund. The fund shall consist of State
23 appropriations, moneys acquired from other governmental or private
24 sources, and moneys remitted in accordance with advance payment
25 contracts. Dividends, interest, and gains accruing to the fund shall
26 increase the total funds available for the program.

27 b. Any funds associated with contracts for which refunds are due,
28 but have not been claimed, shall increase the total funds available for
29 the program. However, the board shall establish procedures for
30 notifying purchasers of any unclaimed refund and shall establish a time
31 period after which a refund may not be claimed.

32 c. Any balance contained in the fund at the end of a fiscal year
33 shall remain therein and shall be available for carrying out the purposes
34 of the program.

35 d. The assets of the fund shall be maintained, invested, and
36 expended solely for the purposes of this act and shall not be loaned,
37 transferred, or otherwise used by the State for any purpose other than
38 the purposes of this act. This subsection shall not be construed to
39 prohibit the board from investing in, by purchase or otherwise, bonds,
40 notes or other obligations of the State or an agency or instrumentality
41 of the State.

42 e. Unless otherwise specified by the board, assets of the fund shall
43 be expended in the following order of priority:

44 (1) to make payments to institutions of higher education on behalf
45 of qualified beneficiaries;

46 (2) to make refunds upon cancellation of advance payment

1 contracts; and

2 (3) to pay the costs of program administration and operations.

3 f. The board shall administer the fund in a manner that is
4 sufficiently actuarially sound to defray the obligations of the program.
5 The board shall annually evaluate or cause to be evaluated the
6 actuarial soundness of the fund. If the board determines a need for
7 additional assets in order to preserve actuarial soundness, the board
8 may adjust the terms of subsequent advance payment contracts to
9 ensure soundness.

10 g. If the board finds that a surplus in the fund exists, the board
11 may compensate purchasers of advance payment contracts in a manner
12 that the board determines to be appropriate.

13

14 6. (New section) a. The ²NJBEST and ²Prepaid Higher
15 Education Expense Board is established as a body corporate and
16 politic in the Executive Branch of State Government and for the
17 purposes of complying with the provisions of Article V, Section IV,
18 paragraph 1 of the New Jersey Constitution, the board is allocated
19 in ²₁ but not of ²₁ the Department of State. Notwithstanding this
20 allocation, the board shall be independent of any supervision or control
21 by the department or by any board or officer thereof.

22 b. The board shall consist of 11 members, including the State
23 Treasurer or a designee, the executive director of the Commission on
24 Higher Education or a designee, the executive director of the Higher
25 Education Student Assistance Authority or a designee, the chair of
26 the New Jersey Presidents' Council or a designee; and seven members
27 appointed by the Governor without regard for political affiliation, one
28 upon the recommendation of the Speaker of the General Assembly,
29 one upon the recommendation of the Minority Leader of the General
30 Assembly, one upon the recommendation of the President of the
31 Senate, and one upon the recommendation of the Minority Leader of
32 the Senate. Each member appointed by the Governor shall possess
33 knowledge, skill, and experience in the areas of accounting, actuary,
34 risk management or investment management. Members appointed by
35 the Governor shall serve terms of three years, except that in making
36 the initial appointments, the Governor shall appoint two members to
37 serve for one year, two members to serve for two years, and three
38 members to serve for three years. Any member appointed to fill a
39 vacancy on the board shall be appointed in a like manner and shall
40 serve until a successor qualifies. Members of the board shall serve
41 without compensation but shall be reimbursed for any necessary
42 expenses incurred in the performance of their duties.

43 c. The Governor shall appoint a member of the board to serve as
44 the initial chair of the board. Thereafter, the board shall elect a chair
45 annually. The board shall annually elect a board member to serve as
46 vice-chair and shall designate a secretary-treasurer who need not be a

1 member of the board. The secretary-treasurer shall keep a record of
2 the proceedings of the board and shall be the custodian of all printed
3 material filed with or by the board and of its official seal.
4 Notwithstanding the existence of vacancies on the board, a majority of
5 the members shall constitute a quorum. The board shall take no
6 official action in the absence of a quorum. The board shall meet, at a
7 minimum, on a quarterly basis at the call of the chair.

8 d. Neither the members of the board, nor any officer or employee
9 of the board shall be liable personally for the debts, liabilities or
10 obligations of the program established pursuant to this act.

11

12 7. (New section) The board shall have the powers necessary or
13 proper to carry out the provisions of this act, including, but not limited
14 to, the power to:

15 a. appoint an executive director to serve as the chief administrative
16 and operational officer of the board and to perform other duties
17 assigned by the board;

18 b. adopt an official seal and alter the same at pleasure;

19 c. sue and be sued in its own name;

20 d. make and enter into all contracts and agreements necessary or
21 incidental to the performance of its duties and the execution of its
22 powers in accordance with the provisions of P.L.1954, c.48 (C.52:34-
23 6 et seq.);

24 e. purchase, without advertising for bids or after having rejected
25 all bids obtained pursuant to advertising therefor, any materials,
26 supplies, goods, services or equipment pursuant to a contract or
27 contracts for such materials, supplies, goods, services or equipment
28 entered into on behalf of the State by the Division of Purchase and
29 Property;

30 f. establish agreements or other transactions with federal, State,
31 and local agencies, including institutions of higher education;

32 g. invest funds not required for immediate disbursement;

33 h. hold, buy, and sell any instruments, obligations, securities, and
34 property determined appropriate by the board;

35 i. employ personnel, including financial and computer experts,
36 legal counsel, accountants, managers and auditors, as may be
37 necessary; to fix their compensation; and to promote and discharge the
38 employees and agents; all without regard to the provisions of Title
39 11A of the New Jersey Statutes;

40 j. solicit and accept gifts, grants, loans, and other aids from any
41 source or participate in any other way in any government program to
42 carry out the purposes of this act;

43 k. require a reasonable length of State residence for qualified
44 beneficiaries, as appropriate;

45 l. reasonably restrict the number of participants in the county
46 college plan and the university plan according to criteria developed by

- 1 the board. A person denied participation solely on the basis of this
2 restriction shall be granted priority for participation during the
3 succeeding year;
- 4 m. segregate contributions and payments to the fund into various
5 accounts;
- 6 n. ¹[require and collect] establish reasonable¹ administrative fees
7 in connection with any transaction and impose reasonable penalties,
8 including default, for delinquent payments or for entering into an
9 advance payment contract on a fraudulent basis;
- 10 o. procure insurance against any loss in connection with the
11 property, assets and activities of the fund or the board;
- 12 p. provide for the receipt of contributions in lump sums or
13 installment payments;
- 14 q. impose reasonable ¹[time]¹ limits on ¹[use of the tuition
15 benefits provided by the program] the length of time within which a
16 qualified beneficiary shall be required to begin to exercise benefits
17 under the program. The board shall also determine whether to impose
18 limits on the total amount of time that the qualified beneficiary is
19 permitted to exercise the benefits under the program¹ ;
- 20 r. delineate the terms under which payments may be withdrawn
21 from the fund and impose reasonable fees and charges for withdrawals;
- 22 s. define for the purposes of this act the ¹[average] maximum¹
23 number of ²credit² hours ²[required for the conferral of] which may
24 be purchased under the program for² an associate degree; the
25 ¹[average] maximum¹ number of ²credit² hours ²[required for the
26 conferral of] which may be purchased under the program for² a
27 baccalaureate degree; the average current and projected tuition within
28 the county college system and the average current and projected
29 tuition of the four-year public institutions of higher education ²utilized
30 to limit the contractual obligations of the board to qualified
31 beneficiaries²;
- 32 t. determine whether the New Jersey Better Educational Savings
33 Trust (NJBEST) Program established pursuant to N.J.S.18A:71B-35
34 through N.J.S.18A:71B-46 and the New Jersey Prepaid Higher
35 Education Expense Program should be marketed by a single private
36 entity and whether a single private entity should manage both
37 programs on behalf of the board;
- 38 u. adopt rules and regulations to implement this act; and
- 39 v. take all actions required so that the program is treated as a
40 qualified State tuition program under section 529 of the federal
41 Internal Revenue Code of 1986, 26 U.S.C.s.529.
- 42
- 43 8. (New section) a. The board, acting with the approval of the
44 State Investment Council in the Division of Investment, shall establish
45 a comprehensive investment plan for the purposes of this act and
46 annually review the plan to assure that the program remains actuarially

1 sound. The comprehensive investment plan shall specify the
2 investment policies to be utilized by the board in its administration of
3 the fund. The board may place assets of the fund in savings accounts
4 or use the funds to purchase fixed or variable life insurance or annuity
5 contracts, securities, evidence of indebtedness or other investment
6 products, pursuant to the comprehensive investment plan and in such
7 proportions as may be designated or approved under that plan. The
8 board shall be subject to the "prudent person" standard of care
9 applicable to the Division of Investment in the Department of the
10 Treasury pursuant to subsection b. of section 11 of P.L.1950, c.270
11 (C.52:18A-89). The insurance, annuity, savings or investment
12 products shall be underwritten and offered in compliance with the
13 applicable federal and State laws and regulations and by persons who
14 are duly authorized by applicable federal and State authorities.

15 b. The board may delegate responsibility for administration of the
16 ¹[comprehensive investment plan required pursuant to subsection a.
17 of this section] program¹ to a person the board determines to be
18 qualified. Directly or through the person, the board may contract, in
19 accordance with the provisions of P.L.1954, c.48 (C.52:34-6 et seq.),
20 with a private corporation or institution ¹authorized to do business in
21 this State¹ to provide such services as may be a part of the
22 ¹[comprehensive investment plan] program¹ or as may be deemed
23 necessary for implementation of the ¹[comprehensive investment plan]
24 program¹, including, but not limited to, providing consolidated billing,
25 individual and collective record keeping and accounting, ¹[and]¹ asset
26 purchase, control and safekeeping ¹, investment management,
27 marketing, administration, program operations, and other services
28 deemed necessary and proper to carry out the purposes of this act.

29 The board shall determine whether the services deemed necessary
30 and proper to carry out the purposes of this act shall be provided by
31 a single or multiple entities¹.

32 c. The board shall annually prepare or cause to be prepared a
33 report setting forth in appropriate detail an accounting of the fund and
34 a description of the financial condition of the program at the close of
35 each fiscal year. The report shall be submitted to the Governor, the
36 President of the Senate, the Speaker of the General Assembly, the
37 State Treasurer, the executive director of the New Jersey Commission
38 on Higher Education and the executive director of the Higher
39 Education Student Assistance Authority on or before August 1 each
40 year. In addition, the board shall make the report available to
41 purchasers of advance payment contracts. The board shall provide to
42 the Commission on Higher Education by August 1 each year complete
43 advance payment contract sales information, including projected
44 higher education enrollments of qualified beneficiaries.

45 d. The accounts of the funds shall be subject to annual audits by
46 the State Auditor or a designee. In addition, the board shall

1 commission an annual independent audit of the program. The results
2 of the independent audit shall be provided to the Governor, the
3 President of the Senate, the Speaker of the General Assembly, the
4 State Treasurer, the executive director of the New Jersey Commission
5 on Higher Education and the executive director of the Higher
6 Education Student Assistance Authority. If the board delegates
7 responsibility for the administration of the comprehensive investment
8 plan pursuant to subsection b. of this section, the cost of the
9 independent audit shall be borne by that person.

10 e. The board may make available insurance coverage written
11 exclusively for the purpose of protecting advance payment contracts,
12 and the purchasers or beneficiaries thereof, which may be issued in the
13 form of a group term life policy to purchasers of advance payment
14 contracts.

15 f. ¹[The board may solicit proposals for the marketing of the
16 program or may delegate this responsibility to the person who is
17 administering the comprehensive investment plan pursuant to
18 subsection b. of this section. The entity designated pursuant to this
19 subsection shall serve as a centralized marketing agent for the program
20 and shall be solely responsible for the marketing of the program.]¹

21 Materials produced for the purpose of marketing the program shall be
22 submitted to the board for review and approval. Marketing materials
23 shall not be made available or distributed to the public prior to the
24 materials being approved by the board. An institution of higher
25 education may distribute marketing materials produced for the
26 program. The State and the board shall not be liable for
27 misrepresentation of the program by a marketing agent.

28 ¹[A single entity may be selected to market both the New Jersey
29 Prepaid Higher Education Expense Program and the New Jersey
30 Better Educational Savings Trust (NJBEST) Program established
31 pursuant to N.J.S.18A:71B-35 through N.J.S.18A:71B-46.

32 Nothing in this subsection shall preclude the person who is
33 administering the comprehensive investment plan pursuant to
34 subsection b. of this section from marketing both the New Jersey
35 Prepaid Higher Education Expense Program and the New Jersey
36 Better Educational Savings Trust (NJBEST) Program established
37 pursuant to N.J.S.18A:71B-35 through N.J.S.18A:71B-46.]¹

38 g. Statements, reports on distributions and information returns
39 relating to accounts shall be prepared, distributed, and filed to the
40 extent required by section 529 of the federal Internal Revenue Code
41 of 1986, 26 U.S.C. s.529.

42
43 9. (New section) a. The board shall develop an advance payment
44 contract with the assistance of the Office of the Attorney General. An
45 advance payment contract shall be exempt from the provisions of
46 Subtitle 3 of Title 17 of the Revised Statutes and Subtitle 3 of Title

1 17B of the New Jersey Statutes. The contents of the contract shall
2 include, but not be limited to, the following:

3 (1) the amount of the payments and the number of payments
4 required from a purchaser;

5 (2) the terms and conditions under which purchasers are required
6 to remit payments, including, but not limited to, the date or dates upon
7 which each payment is due;

8 (3) provisions for late payment charges and for default;

9 (4) provisions for penalty fees for withdrawals from the fund;

10 (5) the name and date of birth of the qualified beneficiary on
11 whose behalf the contract is drawn and the terms and conditions under
12 which another person may be substituted as the qualified beneficiary;

13 (6) the name of any person who may cancel the contract. The
14 terms of the contract shall specify whether the contract may be
15 canceled by the purchaser, the qualified beneficiary, a specific
16 designated person or any combination of these persons;

17 (7) the terms and conditions under which a contract may be
18 canceled, the name of the person entitled to any refund due as a result
19 of the cancellation of the contract pursuant to those terms and
20 conditions, and the method for determining the amount of refund;

21 (8) the time limitations, if any, within which the qualified
22 beneficiary is required to claim benefits through the program. If time
23 limitations are included in the contract, the time expended by a
24 qualified beneficiary as an active duty member of any of the armed
25 services of the United States shall be added to the period of time
26 permitted to exercise the benefits;

27 ¹(9) the terms and conditions, if any, under which a purchaser may
28 designate another individual as a successor owner of the contract; ¹and

29 ¹~~[(9)] (10)~~¹ other terms and conditions deemed by the board to
30 be necessary or proper.

31 b. In addition to the provisions of subsection a. of this section an
32 advance payment contract shall include the following:

33 (1) the number of credit hours contracted by the purchaser;

34 (2) the plan toward which the credit hours shall be applied;

35 (3) the assumption of a contractual obligation by the board to the
36 qualified beneficiary to provide for a specified number of credit hours
37 of undergraduate instruction at a public institution of higher education,
38 not to exceed the ²~~[average]~~ maximum² number of credit hours
39 ²~~[required for the conferral of the degree that corresponds to the plan~~
40 ~~purchased on behalf of the qualified beneficiary]~~ which may be
41 purchased under the program for the associate degree or the
42 baccalaureate degree, as appropriate² .

43

44 10. (New section) a. At a minimum, the board shall make
45 advance payment contracts available for two independent plans to be
46 known as the county college plan and the university plan.

1 (1) Through the county college plan, the advance payment
2 contract shall provide prepaid tuition for a specified number of
3 undergraduate credit hours not to exceed the ¹[average] maximum¹
4 number of ²credit² hours ²[required for the conferral of] which may
5 be purchased under the program for² an associate degree. The cost
6 of participation in the county college plan shall be based primarily on
7 the average current and projected tuition within the county college
8 system and the number of years expected to elapse between the
9 purchase of the plan on behalf of a qualified beneficiary and the
10 exercise of the benefits provided in the plan by the qualified
11 beneficiary. Qualified beneficiaries shall bear the cost of any
12 laboratory fees associated with enrollment in specific courses. ¹In the
13 event that a qualified beneficiary chooses to attend a four-year public
14 institution of higher education, the qualified beneficiary may convert
15 the maximum number of credit hours ²[required for the conferral of]
16 which may be purchased under the program for² an associate degree
17 from a county college plan to a university plan.¹ Each qualified
18 beneficiary shall be classified as ²[a] an in-county² resident for tuition
19 purposes regardless of his actual legal residence ¹during the period in
20 which benefits under the program are being utilized.¹

21 (2) Through the university plan, the advance payment contract
22 shall provide prepaid tuition for a specified number of undergraduate
23 credit hours not to exceed the ¹[average] maximum¹ number of
24 ²credit² hours ²[required for the conferral of] which may be
25 purchased under the program for² a baccalaureate degree. The cost
26 of participation in the university plan shall be based primarily on the
27 average current and projected tuition of the four-year public
28 institutions of higher education and the number of years expected to
29 elapse between the purchase of the plan on behalf of a qualified
30 beneficiary and the exercise of the benefits provided in the plan by the
31 beneficiary. Qualified beneficiaries shall bear the cost of any
32 laboratory fees associated with enrollment in specific courses. In the
33 event that a qualified beneficiary fails to be admitted to a four-year
34 public institution of higher education or chooses to attend a county
35 college, the qualified beneficiary may convert the ¹[average]
36 maximum¹ number of credit hours ²[required for the conferral of]
37 which may be purchased under the program for² an associate degree
38 from a university plan to a county college plan and may retain the
39 remaining credit hours in the university plan or may request a refund
40 for prepaid credit hours in excess of the ¹[average] maximum¹
41 number of credit hours ²[required for the conferral of] which may be
42 purchased under the program for² an associate degree. ²A refund may
43 also be requested for the difference in the cost of credit hours under
44 the university plan and the county college plan for the number of credit
45 hours converted to the county college plan.² Each qualified

1 beneficiary shall be classified as a resident for tuition purposes
2 regardless of his actual legal residence ¹ during the period in which
3 benefits under the program are being utilized¹.

4 b. In addition to the plans required pursuant to subsection a. of
5 this section, the board may make advance payment contracts available
6 for other plans, such as the county college plus university plan
7 whereby the advance payment contract would provide tuition that
8 would allow a qualified beneficiary to attend a county college for an
9 associate degree and then attend a four-year public institution of
10 higher education for a baccalaureate degree.

11 c. The board shall establish procedures for conversions between
12 plans established under the program. The procedures shall include, but
13 not be limited to, the conditions under which a conversion may occur
14 and the method for calculating any refund due.

15 d. A qualified beneficiary may apply a county college plan or a
16 university plan toward any eligible independent institution of higher
17 education. The board shall transfer or cause to have transferred to the
18 eligible independent institution of higher education designated by the
19 qualified beneficiary an amount not to exceed the weighted average
20 tuition purchased under the advance payment contract. In the event
21 that the cost of tuition at the eligible independent institution of higher
22 education is less than the weighted average tuition purchased under
23 the advance payment contract, the amount transferred shall not exceed
24 the actual cost of tuition. A transfer authorized pursuant to this
25 subsection shall not exceed the number of credit hours contracted on
26 behalf of a qualified beneficiary.

27 e. A qualified beneficiary may apply the benefits of an advance
28 payment contract toward an eligible out-of-state institution of higher
29 education. Institutional eligibility for out-of-state institutions of
30 higher education shall be determined by the board, but in making
31 those determinations the board shall recognize that the benefits may
32 only be used at an out-of-state institution of higher education whose
33 students are eligible to receive benefits under section 529 of the
34 federal Internal Revenue Code of 1986, 26 U.S.C. s.529. The board
35 shall transfer or cause to have transferred to the eligible out-of-state
36 institution of higher education designated by the qualified beneficiary
37 an amount not to exceed the weighted average tuition purchased under
38 the advance payment contract. In the event that the cost of tuition at
39 the eligible out-of-state institution of higher education is less than the
40 weighted average tuition purchased under the advance payment
41 contract, the amount transferred shall not exceed the actual cost of
42 tuition. A transfer authorized pursuant to this subsection shall not
43 exceed the number of credit hours contracted on behalf of a qualified
44 beneficiary.

45

46 11. (New section) a. The board shall determine the conditions

1 under which refunds are payable under the program. Unless
2 authorized by the board or under the provisions of this section, a
3 refund shall not exceed the amount paid into the fund by the
4 purchaser. A refund may exceed the amount paid into the fund in the
5 following circumstances:

6 (1) if the qualified beneficiary is awarded a scholarship (or
7 allowance or payment described in subparagraph (B) or (C) of
8 paragraph (1) of subsection (d) of section 135 of the federal Internal
9 Revenue Code of 1986, 26 U.S.C. s.135), the terms of which cover
10 the benefits included in the advance payment contracts, moneys paid
11 for the purchase of the advance payment contracts ¹[shall] may¹ be
12 returned to the purchaser in enrollment period installments coinciding
13 with the matriculation by the qualified beneficiary in amounts equal to
14 the lesser of the original purchase price plus 5% interest compounded
15 annually, or the weighted average tuition purchased under the advance
16 payment contract; and

17 (2) in the event of the death or disability of the qualified
18 beneficiary, moneys paid for the purchase of advance payment
19 contracts shall be returned to the purchaser together with 5% interest
20 compounded annually.

21 b. A refund shall not be authorized through an advance payment
22 contract for any school year partially attended but not completed. For
23 purposes of this subsection, a school year partially attended but not
24 completed means any one enrollment period whereby the student is
25 still enrolled at the conclusion of the official drop-add period, but
26 withdraws before the end of the enrollment period.

27 c. If a qualified beneficiary does not complete a county college
28 plan or university plan, for reasons other than specified in subsection
29 a. of this section, the purchaser shall receive a refund of the amount
30 paid into the fund for the remaining unattended years of the advance
31 payment contract pursuant to rules promulgated by the board and in
32 accordance with the provisions of section 529 of the federal Internal
33 Revenue Code of 1986, 26 U.S.C. s.529.

34
35 12. (New section) Moneys paid into or out of the fund by or on
36 behalf of a purchaser or qualified beneficiary of an advance payment
37 contract for the purposes of financing the cost of qualified higher
38 education expenses under the program are exempt from all claims of
39 creditors of the purchaser or the beneficiary.

40
41 13. (New section) The State or any State agency, county,
42 municipality, or other political subdivision may, by contract or
43 collective bargaining agreement, agree with any employee to remit
44 payments toward advance payment contracts through payroll
45 deductions made by the appropriate officer or officers of the State,
46 State agency, county, municipality, or political subdivision. The

1 payments shall be held and administered in accordance with this act.

2

3 14. (New section) In order to meet the obligations of the board
4 under this act, there shall be paid to the board for deposit in the fund,
5 at the time of distribution, subject to appropriation, such sum, if any,
6 as shall be certified by the chair of the board as necessary to provide
7 that amount at the time of distribution. The chair shall make and
8 deliver to the Governor, or his designee, the certificate stating the
9 sums, if any, required to make available in the fund the amount
10 aforesaid, and the sums so certified shall be appropriated and paid to
11 the board during the then current State fiscal year.

12

13 15. (New section) In the event that the State Treasurer
14 determines the program to be financially infeasible, the State may
15 discontinue the provision of the program. A qualified beneficiary who
16 has been accepted by and is enrolled or is within five years of
17 enrollment in an institution of higher education shall be entitled to
18 exercise the benefits for which he has contracted. All other contract
19 holders shall receive a refund of the amount paid into the fund ¹[, plus
20 interest at the prevailing rate]¹.

21

22 16. (New section) a. A qualified beneficiary who graduates from
23 high school with a 3.0 cumulative grade point average on a 4.0 scale
24 in an academic program or a 3.2 cumulative grade point average on a
25 4.0 scale in a vocational-educational program, based upon grades in
26 core curriculum content subject areas as determined by the board, or
27 who graduates in the top 15% of his high school graduating class shall
28 be admitted to a public institution of higher education. In order to be
29 admitted to a public institution of higher education pursuant to this
30 section, the qualified beneficiary shall meet all of the institution's
31 requirements for admittance. This provision shall not be construed to
32 promise or guarantee that a qualified beneficiary shall be admitted to
33 a particular public institution of higher education.

34 b. In order to effectuate the provisions of subsection a. of this
35 section, the board, in consultation with the Commission on Higher
36 Education, shall develop a process to assist qualified beneficiaries in
37 applying to all public institutions of higher education.

38

39 17. (New section) Moneys paid into or out of an account by or
40 on behalf of a contributor or designated beneficiary for the purposes
41 of financing the cost of qualified higher education expenses under the
42 New Jersey Better Educational Savings Trust (NJBEST) Program, are
43 exempt from all claims of creditors of the contributor or the
44 designated beneficiary.

45

46 18. N.J.S.18A:71B-36 is amended to read as follows:

1 18A:71B-36. As used in this article:

2 "Account" means an individual trust account or savings account
3 established in accordance with this article;

4 ["Authority" means the Higher Education Student Assistance
5 Authority;]

6 "Board" means the ²NJBEST and² Prepaid Higher Education
7 Expense Board established pursuant to section 6 of P.L. , c.
8 (C.) (now pending before the Legislature as this bill).

9 "Contributor" means the person or organization contributing to and
10 maintaining an account and having the right to withdraw funds from
11 the account before the account is disbursed to or for the benefit of the
12 designated beneficiary;

13 "Designated beneficiary" means: a. the individual designated at the
14 time the account is opened as the individual whose higher education
15 expenses are expected to be paid from the account; b. the replacement
16 beneficiary if the change in designated beneficiary would not result in
17 a distribution that is included in federal gross income under section
18 529 of the federal Internal Revenue Code of 1986, 26 U.S.C.s.529;
19 and c. in the case of an interest in the program purchased by a state or
20 local government or an organization described in paragraph (3) of
21 subsection (c) of section 501 of the federal Internal Revenue Code of
22 1986, 26 U.S.C.s.501 and exempt from taxation under subsection (a)
23 of section 501 of the federal Internal Revenue Code of 1986, 26
24 U.S.C.s.501, as a part of a scholarship program operated by the
25 government or organization, the individual receiving the interest as a
26 scholarship;

27 "Higher education institution" means an eligible educational
28 institution as defined in or for purposes of section 529 of the federal
29 Internal Revenue Code of 1986, 26 U.S.C.s.529. Higher education
30 institution shall include a proprietary institution if expenses for tuition
31 at the institution would be considered qualified higher education
32 expenses under section 529 of the federal Internal Revenue Code of
33 1986, 26 U.S.C.s.529, but only for degree granting programs licensed
34 or approved by the Commission on Higher Education or for other
35 proprietary institutions as determined by the [authority] board;

36 "Investment Manager" means the Division of Investment in the
37 Department of the Treasury or the private entities authorized to do
38 business in this State that may be designated by the [authority] board
39 to invest the funds of the trust pursuant to the terms of this article;

40 "Member of the family" means a member of the family as defined in
41 or for purposes of section 529 of the federal Internal Revenue Code
42 of 1986, 26 U.S.C.s.529;

43 "Nonqualified withdrawal" means a withdrawal from an account
44 other than: a. a qualified withdrawal; b. a withdrawal made as the
45 result of the death or disability of the designated beneficiary of an
46 account; c. a withdrawal made on account of a scholarship (or

1 allowance or payment described in subparagraph (B) or (C) of
2 paragraph (1) of subsection (d) of section 135 of the federal Internal
3 Revenue Code of 1986, 26 U.S.C.s.135) received by the designated
4 beneficiary, but only to the extent of the amount of that scholarship,
5 allowance or payment; d. a rollover or change in designated
6 beneficiary which would not result in a distribution includible in
7 federal gross income under section 529 of the federal Internal Revenue
8 Code of 1986, 26 U.S.C.s.529; or e. any other withdrawal if the failure
9 of the program to impose a more than de minimis penalty on the
10 withdrawal would cause the program not to be a qualified State tuition
11 program under section 529 of the federal Internal Revenue Code of
12 1986, 26 U.S.C.s.529;

13 "Program" means the "New Jersey Better Educational Savings Trust
14 (NJBEST) Program" established pursuant to this article;

15 "Qualified higher education expenses" means expenses described in
16 paragraph (3) of subsection (e) of section 529 of the federal Internal
17 Revenue Code of 1986, 26 U.S.C.s.529 incurred in connection with
18 the enrollment of a designated beneficiary at a higher education
19 institution;

20 "Qualified withdrawal" means a withdrawal from an account to pay
21 the qualified higher education expenses of the designated beneficiary
22 of the account; but a withdrawal shall not be considered a qualified
23 withdrawal if the failure of the program to impose a more than de
24 minimis penalty on the withdrawal would cause the program not to
25 qualify as a qualified State tuition program under section 529 of the
26 federal Internal Revenue Code of 1986, U.S.C.s.529;

27 "Trust" means the "New Jersey Better Educational Savings Trust"
28 established pursuant to N.J.S.18A:71B-37.

29 (cf: N.J.S.18A:71B-36)

30

31 19. N.J.S.18A:71B-37 is amended to read as follows:

32 18A:71B-37. There is created within the [Higher Education
33 Student Assistance Authority] ²NJBEST and ²Prepaid Higher
34 Education Expense Board the New Jersey Better Educational Savings
35 Trust (NJBEST). The trust shall provide a mechanism through which
36 the [authority] board, as trustee, holds accounts established and
37 maintained pursuant to the provisions of this article to finance the cost
38 of qualified higher education expenses.

39 (cf: N.J.S.18A:71B-37)

40

41 20. N.J.S.18A:71B-38 is amended to read as follows:

42 18A:71B-38. The [Higher Education Student Assistance Authority]
43 ²NJBEST and ²Prepaid Higher Education Expense Board established
44 pursuant to section 6 of P.L. , c. (C.)(now pending before the
45 Legislature as this bill) shall administer the NJBEST Program. The
46 [authority] board shall have the power to:

- 1 a. serve as trustee of the trust;
- 2 b. adopt rules and regulations pursuant to the "Administrative
3 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), necessary to
4 carry out the provisions of this article;
- 5 c. prescribe and provide appropriate forms for participation in the
6 program;
- 7 d. select an investment manager and any other contractors needed
8 to manage and market the program;
- 9 e. monitor the investment manager and any other contractors by
10 audits and other reports;
- 11 f. collect reasonable administrative fees in connection with any
12 contract or transaction relating to the program;
- 13 g. impose penalties for nonqualified withdrawals;
- 14 h. take all actions required so that the program is treated as a
15 qualified State tuition program under section 529 of the federal
16 Internal Revenue Code of 1986, 26 U.S.C.s.529; and
- 17 i. perform any other acts which may be deemed necessary or
18 appropriate to carry out the objects and purposes of this article.
19 (cf: N.J.S.18A:71B-38)

20

21 21. N.J.S.18A:71B-39 is amended to read as follows:

22 18A:71B-39. Neither the members of the [authority] board, nor
23 any officer or employee of the [authority] board shall be liable
24 personally for the debts, liabilities or obligations of the program
25 established pursuant to this article.
26 (cf: N.J.S.18A:71B-39)

27

28 22. N.J.S.18A:71B-40 is amended to read as follows:

29 18A:71B-40. a. The [authority] board shall select an investment
30 manager or managers to invest the funds of the trust or the funds in
31 accounts. In making this selection, any investment manager shall be
32 subject to the "prudent person" standard of care applicable to the
33 Division of Investment in the Department of the Treasury pursuant to
34 subsection b. of section 11 of P.L.1950, c.270 (C.52:18A-89), and the
35 [authority] board shall consider the impact of fees and costs imposed
36 by the manager or managers on yield to contributors.

37 b. The [authority] board may select more than one investment
38 manager and investment instrument for the program if it is in the best
39 interest of contributors and will not interfere with the administration
40 of the program.

41 c. The [authority] board may provide a contributor with a choice
42 of investment managers or investment instruments or both for the
43 program if both of the following conditions exist:

44 (1) the federal Internal Revenue Service has provided guidance that
45 providing a contributor with a choice of investment managers or
46 instruments under a State tuition program will not cause the program

1 to fail to qualify for favorable tax treatment under section 529 of the
2 federal Internal Revenue Code of 1986, 26 U.S.C.s.529; and

3 (2) the [authority] board concludes that a choice of investment
4 managers or of investment instruments is in the best interest of
5 contributors and will not interfere with the administration of the
6 program.

7 d. If the [authority] board terminates the designation of an
8 investment manager to hold accounts, and accounts must be moved
9 from that investment manager to another investment manager, the
10 [authority] board shall select the investment manager and type of
11 investment instrument to which the balance of the account is moved,
12 unless the federal Internal Revenue Service provides guidance that
13 allowing the contributor to select among several investment managers
14 or investment instruments that have been selected by the [authority]
15 board would not cause a program to cease to be a qualified State
16 tuition program for the purposes of section 529 of the federal Internal
17 Revenue Code, 26 U.S.C.s.529.

18 e. The board, upon the effective date of P.L. , c. (C.)(now
19 pending before the Legislature as this bill) and in accordance with the
20 provisions of P.L.1954, c.48 (C.52:34-6 et seq.), shall select an
21 investment manager or managers for the program. If the selection
22 process provided for in this subsection results in an investment
23 manager other than the Division of Investment, the board shall provide
24 for the orderly transfer of accounts and shall ensure that all the rights
25 of the contributors and designated beneficiaries participating in the
26 program as of the effective date of P.L. , c. (C.)(now pending
27 before the Legislature as this bill), are protected.

28 (cf: N.J.S.18A:71B-40)

29
30 23. N.J.S.18A:71B-41 is amended to read as follows:

31 18A:71B-41. a. The program shall be operated as a trust through
32 the use of accounts for designated beneficiaries. An account may be
33 opened by any person who desires to save to pay the qualified higher
34 education expenses of an individual by satisfying each of the following
35 requirements:

36 (1) completing an application in the form prescribed by the
37 [authority] board;

38 (2) paying the one-time application fee established by the
39 [authority] board;

40 (3) making the minimum contribution required by the [authority]
41 board for opening an account;

42 (4) designating the account or accounts to be opened; and

43 (5) in the case of an account to which subsection a. of
44 N.J.S.A.18A:71B-44 would apply, demonstrating to the satisfaction
45 of the [authority] board that either the contributor, if an individual, or
46 the designated beneficiary is a New Jersey resident. The requirement

1 of New Jersey residency for either the contributor or the designated
2 beneficiary would not apply to an account to which subsection b. of
3 N.J.S.18A:71B-44 would apply unless otherwise determined by the
4 [authority] board.

5 b. Except as provided under N.J.S.18A:71B-42, only the
6 contributor may make contributions to an account after the account is
7 opened.

8 c. Contributions to accounts shall be made only in cash, as defined
9 by the [authority] board pursuant to regulations, in accordance with
10 section 529 of the federal Internal Revenue Code of 1986, 26
11 U.S.C.s.529.

12 d. Contributors may withdraw all or part of the balance from an
13 account on sixty days' notice or a shorter period, as may be authorized
14 by the [authority] board pursuant to regulations.

15 e. A contributor may change the designated beneficiary of an
16 account or rollover all or a portion of an account to another account
17 if the change or rollover would not result in a distribution includible
18 in gross income under section 529 of the federal Internal Revenue
19 Code of 1986, 26 U.S.C.s.529, in accordance with procedures
20 established by the [authority] board.

21 f. In the case of any nonqualified withdrawal, a penalty at a level
22 established by the [authority] board and sufficient to be considered a
23 more than de minimis penalty for purposes of section 529 of the
24 federal Internal Revenue Code of 1986, 26 U.S.C.s.529, shall be
25 withheld and paid to the [authority] board for use in operating and
26 marketing the program. The [authority] board may elect not to
27 impose a penalty if that section ceases to include a provision requiring
28 more than de minimis penalties for a program to qualify as a qualified
29 State tuition program.

30 g. If a contributor makes a nonqualified withdrawal and a penalty
31 amount is not withheld pursuant to subsection f. of this section or the
32 amount withheld is less than the amount required to be withheld under
33 that subsection, the contributor shall pay the unpaid portion of the
34 penalty to the [authority] board at the same time that the contributor
35 files a State income tax return for the taxable year of the withdrawal,
36 or if the contributor does not file a return, the unpaid portion of the
37 penalty shall be paid on or before the due date for the filing of that
38 income tax return.

39 h. Each account shall be maintained separately from each other
40 account under the program.

41 i. Separate records and accounting shall be maintained for each
42 account for each designated beneficiary.

43 j. A contributor to or designated beneficiary of any account shall
44 not direct the investment of any contributions to an account or the
45 earnings from the account, except as permitted under section 529 of
46 the federal Internal Revenue Code of 1986, 26 U.S.C.s.529.

1 k. A contributor or a designated beneficiary shall not use an
2 interest in an account as security for a loan. Any pledge of an interest
3 in an account is of no force and effect.

4 l. The maximum contribution for any designated beneficiary shall
5 be determined by the [authority] board pursuant to regulations, in
6 accordance with section 529 of the federal Internal Revenue Code of
7 1986, 26 U.S.C.s.529.

8 m. Statements, reports on distributions and information returns
9 relating to accounts shall be prepared, distributed, and filed to the
10 extent required by section 529 of the federal Internal Revenue Code
11 of 1986, 26 U.S.C.s.529, or regulations issued thereunder.

12 n. The [authority] board may charge, impose and collect
13 reasonable administrative fees and service charges in connection with
14 any agreement, contract or transaction relating to the program. These
15 fees and charges may be imposed directly on contributors or may be
16 taken as a percentage of the investment earnings on accounts.

17 o. The State or any State agency, municipality, or other political
18 subdivision may, by contract or collective bargaining agreement, agree
19 with any employee to remit contributions to accounts through payroll
20 deductions made by the appropriate officer or officers of the State,
21 State agency, county, municipality, or political subdivision. The
22 contributions shall be held and administered in accordance with this
23 act.

24 (cf: N.J.S.18A:71B-41)

25
26 24. N.J.S.18A:71B-42 is amended to read as follows:

27 18A:71B-42. a. An amount of no less than \$500 shall be provided
28 by the State for the qualified higher education expenses of a
29 designated beneficiary at the time of a qualified withdrawal provided
30 that:

31 (1) the contributor demonstrates, to the satisfaction of the
32 [authority] board, that the contributor participated in the program for
33 at least four years by making a qualifying minimum initial deposit or
34 qualifying minimum annual contributions, or both, as shall be
35 determined by the [authority] board, for a designated beneficiary;

36 (2) the designated beneficiary demonstrates, to the satisfaction of
37 the [authority] board, attendance or enrollment in a higher education
38 institution in this State, at the time of initial attendance or enrollment
39 in the higher education institution; and

40 (3) either the contributor, if an individual, or the designated
41 beneficiary demonstrates, to the satisfaction of the [authority] board,
42 that the contributor or designated beneficiary is a New Jersey resident.

43 b. The amount provided under subsection a. of this section shall
44 meet the requirements of a qualified scholarship within the meaning of
45 section 117 of the federal Internal Revenue Code of 1986,
46 26 U.S.C.s.117, for a designated beneficiary satisfying the
47 requirements of subsection a. of this section.

1 c. A designated beneficiary shall not receive more than one State
2 scholarship provided pursuant to subsection a. of this section.

3 (cf: N.J.S.18A:71B-42)

4

5 25. N.J.S.18A:71B-43 is amended to read as follows:

6 18A:71B-43. Annually, the [authority] board shall determine a
7 dollar amount of an account, which shall not be less than \$25,000,
8 which shall not be considered in evaluating the financial needs of a
9 student enrolled in an institution of higher education located in the
10 State of New Jersey, or be deemed a financial resource or a form of
11 financial aid or assistance to a student, for purposes of determining the
12 eligibility of a student for any scholarship, grant, or monetary
13 assistance awarded by the State; nor shall the amount of any account
14 as determined by the [authority] board provided for a designated
15 beneficiary under this article reduce the amount of any scholarship
16 grant or monetary assistance which the student is entitled to be
17 awarded by the State.

18 (cf: N.J.S.18A:71B-43)

19

20 26. N.J.S.18A:71B-44 is amended to read as follows:

21 18A:71B-44. a. If the investment manager is the Division of
22 Investment in the Department of the Treasury, in order to assure the
23 availability of principal of any amount contributed under this article,
24 there shall be paid to the [authority] board for deposit in the trust, at
25 the time of distribution, subject to appropriation, such sum, if any, as
26 shall be certified by the [chairperson] chair of the [authority] board
27 as necessary to provide that amount at the time of distribution. The
28 [chairperson] chair shall make and deliver to the Governor, or his
29 designee, the certificate stating the sums, if any, required to make
30 available in the trust the amount aforesaid, and the sums so certified
31 shall be appropriated and paid to the [authority] board during the then
32 current State fiscal year.

33 b. If the investment manager is a private entity, the investment of
34 the principal and interest of any amount contributed under this article
35 shall be ¹[backed by the full faith and credit of the United States or be
36 fully insured by the Federal Deposit Insurance Corporation or other
37 similar insurer backed by the full faith and credit of the United States.
38 No account balance shall exceed the maximum amount of insurance
39 provided by the insurer. No investment is permitted in derivatives of
40 eligible securities, and any investment must be designed to balance
41 prospective payments according to the guidelines established] made
42 in accordance with an investment plan approved by the State
43 Investment Council in the Division of Investment¹.

44 (cf: N.J.S.18A:71B-44)

45

46 27. N.J.S.18A:71B-45 is amended to read as follows:

47 18A:71B-45. a. Nothing in this article shall be construed to:

1 (1) guarantee that a designated beneficiary will be admitted to a
2 higher education institution or be allowed to continue enrollment at or
3 graduate from a higher education institution after admission;

4 (2) establish State residency for a person merely because the person
5 is a designated beneficiary; or

6 (3) guarantee that amounts saved pursuant to the program will be
7 sufficient to cover the qualified higher education expenses of a
8 designated beneficiary.

9 b. Nothing in this article establishes any obligation of this State or
10 any agency or instrumentality of this State to guarantee for the benefit
11 of any contributor or designated beneficiary any of the following:

12 (1) the rate of interest or other return on any account; or

13 (2) the payment of interest or other return on any account.

14 c. Nothing in this article establishes any obligation or liability of
15 this State or any agency or instrumentality of this State with respect
16 to any federal or State tax liability of any contributor or designated
17 beneficiary in this program.

18 d. Under regulations promulgated by the [authority] board, every
19 contract and application that may be used in connection with a
20 contribution to an account shall clearly indicate that the account is not
21 insured by this State nor is the investment return guaranteed by this
22 State.

23 (cf: N.J.S.18A:71B-45)

24

25 28. N.J.S.18A:71B-46 is amended to read as follows:

26 18A:71B-46. If the Congress of the United States enacts legislation
27 that exempts educational savings accounts from federal income
28 taxation, sections N.J.S.18A:71B-42 and N.J.S.18A:71B-43 shall
29 apply with respect to such educational savings accounts as if they were
30 accounts established under this act and the beneficiaries of the
31 accounts were designated beneficiaries subject to the approval of the
32 [New Jersey Higher Education Assistance Authority] board.

33 (cf: N.J.S.18A:71B-46)

34

35 29. (New section) Regulations adopted by the New Jersey Higher
36 Education Student Assistance Authority pertaining to the New Jersey
37 Better Educational Savings Trust (NJBEST) Program shall continue
38 with full force and effect under the board for a period of one year from
39 the effective date of this act or until amended, continued or repealed
40 by the board pursuant to law.

41

42 30. Section 13 of P.L..1997, c.237 (C.54A:6-25) is amended to
43 read as follows:

44 13. a. Gross income shall not include earnings on an education
45 individual retirement account or a qualified State tuition program
46 account until the earnings are distributed from the account, at which
47 time they shall be includible in the gross income of the distributee

1 except as provided in this section.

2 b. Gross income shall not include qualified distributions as defined
3 in paragraph (3) of subsection c. of this section.

4 c. For purposes of this section:

5 (1) "Education individual retirement account" means an education
6 retirement account as defined pursuant to paragraph (1) of subsection
7 (b) of section 530 of the federal Internal Revenue Code of 1986,
8 26 U.S.C. s.530.

9 (2) "Qualified State tuition program account" means an account
10 established pursuant to the "New Jersey Better Educational Savings
11 Trust (NJBEST) Program," (N.J.S.18A:71B-35 et seq.) , an account
12 established pursuant to the "New Jersey Prepaid Higher Education
13 Expense Program,"(P.L. , c. (C.))(now pending before the
14 Legislature as this bill) or an account established pursuant to any
15 qualified State tuition program, as defined pursuant to subsection (b)
16 of section 529 of the federal Internal Revenue Code of 1986,
17 26 U.S.C. s.529 or a tuition credit or certificate purchased pursuant to
18 any such program.

19 (3) "Qualified distribution" means any of the following:

20 (a) a distribution from a qualified State tuition program account
21 that is used for qualified higher education expenses as defined pursuant
22 to paragraph (3) of subsection (e) of section 529 of the federal Internal
23 Revenue Code of 1986, 26 U.S.C. s.529;

24 (b) a rollover from one account to another account as described in
25 clause (i) of subparagraph (C) of paragraph (3) of subsection (c) of
26 section 529 or paragraph (5) of subsection (d) of section 530 of the
27 federal Internal Revenue Code of 1986, 26 U.S.C. s.529 or 530;

28 (c) a change in designated beneficiaries of an account as described
29 in clause (ii) of subparagraph (C) of paragraph (3) of subsection (c) of
30 section 529 or paragraph (6) of subsection (d) of section 530 of the
31 federal Internal Revenue Code of 1986, 26 U.S.C. s.529 or 530;

32 d. The portion of a distribution from an education individual
33 retirement account or a qualified State tuition program account that is
34 attributable to earnings shall be determined in accordance with the
35 principles of section 72 of the federal Internal Revenue Code of 1986,
36 26 U.S.C. s.72, as applied for purposes of sections 529 and 530 of the
37 federal Internal Revenue Code of 1986, 26 U.S.C. ss.529 and 530.

38 (cf: P.L.1999, c.116, s.1)

39

40 31. There is appropriated from the General Fund to the ²NJBEST
41 and² Prepaid Higher Education Expense Board in, but not of, the
42 Department of State \$250,000 to effectuate the provisions of this act.

43

44 32. This act shall take effect immediately.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[Second Reprint]

ASSEMBLY COMMITTEE SUBSTITUTE FOR **ASSEMBLY, Nos. 1622 and 2296**

STATE OF NEW JERSEY

DATED: JUNE 14, 2001

The Senate Budget and Appropriations Committee reports favorably Assembly Bill Nos. 1622 and 2296 (ACS/2R).

This bill establishes the New Jersey Prepaid Higher Education Expense Program to provide a mechanism through which the cost of tuition may be paid in advance of enrollment in an institution of higher education at a rate lower than the cost at the time of actual enrollment.

The bill creates the NJBEST and Prepaid Higher Education Expense Board in, but not of, the Department of State, which would consist of the State Treasurer, the executive director of the Commission on Higher Education, the executive director of the Higher Education Student Assistance Authority, the chair of the New Jersey Presidents' Council, or their designees, and seven members appointed by the Governor, who will possess knowledge, skill and experience in the areas of accounting, actuary, risk management or investment management. The board would be responsible for administering the New Jersey Prepaid Higher Education Expense Program.

The bill directs the board, with the assistance of the Office of the Attorney General, to develop an advance payment contract. The following provisions must be included in the contract:

- the amount of the payment and the number of payments required;
- the terms and conditions under which a purchaser will remit payments, including, but not limited to, the dates upon which each payment will be due;
- provisions for late payment charges and for default;
- provisions for penalty fees for withdrawals from the fund;
- the name and date of birth of the qualified beneficiary on whose behalf the contract is drawn and the terms and conditions under which another person may be substituted as the qualified beneficiary;
- the name of any person who may cancel the contract;
- the terms and conditions under which a contract may be canceled, the name of the person entitled to any refund due as a result of the cancellation, and the amount of refund, if any, due to the person

named;

- the time limitations, if any, within which the qualified beneficiary must claim benefits through the program;
- the terms and conditions, if any, under which a purchaser may designate another individual as a successor owner of the contract; and
- other terms and conditions deemed by the board to be necessary or proper.

In addition to these general provisions, the bill also requires that the advance payment contract include specific provisions, including the number of credit hours contracted by the purchaser and whether the credit hours will be applied toward a four-year public institution of higher education or a county college. The advance payment contract will also include a provision obligating the board to provide to the qualified beneficiary the specified number of credit hours of undergraduate instruction at a public institution of higher education, not to exceed the maximum number of credit hours which may be purchased under the program for the associate degree or the baccalaureate degree, as appropriate.

The bill requires the board to make advance payment contracts available for two independent plans, at a minimum, to be known as the county college plan and the university plan. Through a county college plan, the advance payment contract will provide prepaid tuition for a specified number of undergraduate credit hours not to exceed the maximum number of hours which may be purchased under the program for an associate degree. Through a university plan, the advance payment contract will provide prepaid tuition for a specified number of undergraduate credit hours not to exceed the maximum number of hours which may be purchased under the program for a baccalaureate degree. The cost of participating in each of these plans will be based primarily on the average current and projected tuition within the county college system or the four-year public institutions of higher education system, respectively, and the number of years expected to elapse between the purchase of the plan and the exercise of the benefits by the qualified beneficiary.

The bill permits a county college plan or a university plan to be applied toward any independent institution of higher education. Under these circumstances, the board will transfer to these institutions an amount not to exceed the weighted average tuition purchased under the advance payment contract. If the costs at the independent institution of higher education are less than the weighted average tuition purchased under the advance payment contract, then the amount transferred may not exceed the actual cost of tuition.

The bill also permits the benefits of an advance payment contract to be applied toward an eligible out-of-state institution of higher education. Under these circumstances, the board will transfer to these institutions an amount not to exceed the weighted average tuition purchased under the advance payment contract. If the costs at the out-of-state institution are less than the weighted average tuition

purchased under the advance payment contract, then the amount transferred may not exceed the actual cost of tuition.

The bill guarantees that if the moneys in the fund are insufficient to offset the obligations of the board, then the State will meet those obligations. As a measure of protection for the State, the State Treasurer may discontinue the program if it is determined that the program is financially infeasible. Under these conditions, a qualified beneficiary who has been accepted by and is enrolled, or is within five years of enrollment, in an institution of higher education will be entitled to exercise the benefits for which the beneficiary has contracted. All other contract holders will receive a refund of the amount paid into the fund.

The bill provides that a qualified beneficiary who graduates from high school with a 3.0 cumulative grade point average on a 4.0 scale in an academic program or a 3.2 cumulative grade point average on a 4.0 scale in a vocational education program, based upon grades in core curriculum content subject areas, or who graduates in the top 15% of his high school graduating class will be admitted to a public institution of higher education. The qualified beneficiary must, however, meet all of the institution's requirements for admittance.

The bill also amends the law establishing the New Jersey Better Educational Savings Trust (NJBEST) Program. The responsibility for the program's administration is shifted from the Higher Education Student Assistance Authority to the NJBEST and Prepaid Higher Education Expense Board, which is also to administer the New Jersey Prepaid Higher Education Expense Program. The bill also provides that the board must, after the effective date of the act, select an investment manager for the program pursuant to the provisions of the State public contracting law. In the event that the investment manager changes due to this provision, the board must provide for the orderly transfer of accounts and must ensure that all the rights of the contributors and designated beneficiaries are protected.

The bill also amends the State gross income tax code to specifically include the New Jersey Prepaid Higher Education Expense Program as a qualified State tuition program under which the earnings are not included in gross income until they are distributed from the account.

The provisions of this bill are identical to those of Senate Bill No. 2054 (1R), which the committee also reports this day.

FISCAL IMPACT

The Office of Legislative Services (OLS) cannot estimate the additional cost that the State would incur for the establishment of the New Jersey Prepaid Higher Education Expense Program. The following, however, are the elements that will impact State costs for the program:

Start-up costs. The Higher Education Student Assistance Authority estimates that the initial start-up costs for the program will be a minimum of \$500,000. This estimate includes the salary of an

executive director, one professional staff person, one secretarial staff person, rental expenses and initial program marketing costs. The bill includes an appropriation of \$250,000 to finance the program's start-up costs.

Operating costs. The bill charges the Prepaid Higher Education Expense Board with the operation of both the Prepaid Higher Education Expense Program and NJBEST. In FY2001, the Authority received a \$750,000 appropriation to administer NJBEST; it is difficult, however, to forecast the amount of operating funds that will be required to administer both programs. Whereas NJBEST is being administered by an existing State agency, the creation of a new State entity will initially entail some additional costs. The program may require staff in addition to those positions funded through the start-up appropriation.

The board is charged with the development of an investment plan for the program and is authorized to delegate responsibility for the administration of that plan. The board is authorized to contract with a private corporation or institution to provide the services necessary to implement the plan including consolidated billing, record keeping and accounting, and asset purchase, control and safekeeping. The overall operational costs of the program will obviously be dependent on the contract prices negotiated by the board for the above and other necessary services. Presumably some of these costs will be offset by the administrative fees which the board is authorized to collect from purchasers.

The board is also directed under the bill to solicit bids for an investment manager for the NJBEST Program. Currently, the Division of Investment in the Department of the Treasury acts as the NJBEST investment manager. The selection of a different manager could result in management expenses higher than those charged by the Division, although any such higher costs could be offset by a compensating increase in return or by administrative fees charged to purchasers.

Potential State liability. Under the bill, moneys remitted by purchasers for advance payment contracts will be combined and deposited into the Prepaid Higher Education Expense Trust Fund and invested in a manner that yields, at a minimum, the difference between the prepaid amount and the average in-state tuition cost at the public institutions of higher education. Since the enactment of the "Higher Education Restructuring Act of 1994," P.L.1994, c.48, tuition and fees are set by each individual institution's board of trustees and the State has no authority to limit increases. Should future increases in tuition be greater than the earnings on the investment of trust funds, the State will face a future liability in meeting the guaranteed higher education expenses of program beneficiaries. This liability is limited by the fact that the State Treasurer may discontinue the program if he determines it to be financially infeasible. In that case the State would only be required to meet the expenses of a beneficiary who has been accepted by, or is enrolled or within five years of enrollment in, an institution of

higher education. All other contract holders would receive a refund of the amount paid into the fund, plus interest at the prevailing rate.

Potential measures of cost control. The bill would empower the Prepaid Higher Education Expense Board to limit the length of time within which qualified beneficiaries would have to begin exercising program benefits. The board also would have the authority to limit the total amount of time over which a beneficiary could exercise those program benefits.

SENATE, No. 2054

STATE OF NEW JERSEY
209th LEGISLATURE

INTRODUCED JANUARY 22, 2001

Sponsored by:

Senator JOHN O. BENNETT

District 12 (Monmouth)

SYNOPSIS

Establishes New Jersey Prepaid Higher Education Expense Program.

CURRENT VERSION OF TEXT

As introduced.



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2

1 AN ACT establishing a Prepaid Higher Education Expense Program,
2 amending and supplementing Title 18A of the New Jersey Statutes
3 and making an appropriation.

4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7

8 1. (New section) Sections 1 through 16 of this act shall be known
9 and may be cited as the "New Jersey Prepaid Higher Education
10 Expense Program Act of 2000."

11

12 2. (New section) The Legislature finds and declares: that
13 educational opportunity at the college and university level is a critical
14 State interest which is linked to the needs of the State to ensure a
15 well-educated work force; that educational opportunity is best ensured
16 through the provision of institutions of higher education which are
17 geographically and financially accessible; that it is in the best interests
18 of this State to adopt and foster mechanisms which will encourage its
19 citizens to engage in the timely financial planning which is necessary
20 to guarantee that students will have the financial resources necessary
21 to pursue a higher education given the annually escalating level of
22 resources which such attendance requires; and that one such
23 mechanism which has proven successful in some other states is the
24 establishment of a program through which many of the costs
25 associated with attendance at institutions of higher education may be
26 paid in advance and fixed at a guaranteed level for the duration of
27 undergraduate enrollment.

28

29 3. (New section) As used in sections 1 through 16 of this act:

30 "Advance payment contract" means a contract entered into by the
31 board and a purchaser pursuant to the provisions of this act;

32 "Board" means the Prepaid Higher Education Expense Board
33 established pursuant to section 6 of this act;

34 "Eligible independent institution of higher education" means those
35 institutions of higher education incorporated and located in this State,
36 which, by virtue of law or character or license, are nonprofit
37 educational institutions empowered to grant academic degrees and
38 which provide a level of education which is equivalent to the education
39 provided by the State's public institutions of higher education as
40 attested by the receipt of and continuation of regional accreditation by
41 the Middle States Association of Colleges and Schools, and which are
42 eligible to receive State aid under the provisions of the Constitution of
43 the United States and the Constitution of the State of New Jersey and

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

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1 whose students are eligible to receive benefits under section 529 of the
2 federal Internal Revenue Code of 1986, 26 U.S.C. s.529. "Eligible
3 independent institution of higher education" does not include any
4 educational institution dedicated primarily to the preparation or
5 training of ministers, priests, rabbis, or other professional persons in
6 the field of religion;

7 "Fund" means the Prepaid Higher Education Expense Trust Fund
8 established pursuant to section 5 of this act;

9 "Institution of higher education" means an eligible educational
10 institution as defined in or for purposes of section 529 of the federal
11 Internal Revenue Code of 1986, 26 U.S.C.s.529. "Institution of higher
12 education" shall include a proprietary institution if expenses for tuition
13 at the institution would be considered qualified higher education
14 expenses under section 529 of the federal Internal Revenue Code of
15 1986, 26 U.S.C.s.529, but only for degree granting programs licensed
16 or approved by the Commission on Higher Education or for other
17 proprietary institutions as determined by the board;

18 "Program" means the New Jersey Prepaid Higher Education
19 Expense Program established pursuant to section 4 of this act;

20 "Public institution of higher education" means Rutgers, The State
21 University, the State colleges or universities established pursuant to
22 chapter 64 of Title 18A of the New Jersey Statutes, the New Jersey
23 Institute of Technology, the University of Medicine and Dentistry of
24 New Jersey, the county colleges and any other public university or
25 college now or hereafter established or authorized by State law. A
26 public institution of higher education is an institution whose students
27 are eligible to receive benefits under section 529 of the federal Internal
28 Revenue Code of 1986, 26 U.S.C. s.529;

29 "Purchaser" means a person who makes or is obligated to make
30 payments in accordance with an advance payment contract;

31 "Qualified beneficiary" means: a. a resident of this State at the time
32 a purchaser enters into an advance payment contract on behalf of the
33 resident; or b. a nonresident who is the child of a noncustodial parent
34 who is a resident of the State at the time that the noncustodial parent
35 enters into an advance payment contract on behalf of the child;

36 "Tuition" means the charges imposed by an institution of higher
37 education for enrollment at the institution.

38

39 4. (New section) a. There is established the New Jersey Prepaid
40 Higher Education Expense Program to provide a means for payment
41 of the costs of tuition in advance of enrollment at an institution of
42 higher education. Moneys remitted in accordance with advance
43 payment contracts shall be combined and invested in a manner that
44 yields, at a minimum, sufficient interest to generate the difference
45 between the prepaid amount and the average in-state tuition costs at
46 public institutions of higher education in the State at the time that the

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1 benefits are exercised.

2 b. The program shall be administered by the Prepaid Higher
3 Education Expense Board established pursuant to section 6 of this act.

4

5 5. (New section) a. There is created within the Prepaid Higher
6 Education Expense Board the Prepaid Higher Education Expense
7 Trust Fund. The fund shall consist of State appropriations, moneys
8 acquired from other governmental or private sources, and moneys
9 remitted in accordance with advance payment contracts. Dividends,
10 interest, and gains accruing to the fund shall increase the total funds
11 available for the program.

12 b. Any funds associated with contracts for which refunds are due,
13 but have not been claimed, shall increase the total funds available for
14 the program. However, the board shall establish procedures for
15 notifying purchasers of any unclaimed refund and shall establish a time
16 period after which a refund may not be claimed.

17 c. Any balance contained in the fund at the end of a fiscal year shall
18 remain therein and shall be available for carrying out the purposes of
19 the program.

20 d. The assets of the fund shall be maintained, invested, and
21 expended solely for the purposes of this act and shall not be loaned,
22 transferred, or otherwise used by the State for any purpose other than
23 the purposes of this act. This subsection shall not be construed to
24 prohibit the board from investing in, by purchase or otherwise, bonds,
25 notes or other obligations of the State or an agency or instrumentality
26 of the State.

27 e. Unless otherwise specified by the board, assets of the fund shall
28 be expended in the following order of priority:

29 (1) to make payments to institutions of higher education on behalf
30 of qualified beneficiaries;

31 (2) to make refunds upon cancellation of advance payment
32 contracts; and

33 (3) to pay the costs of program administration and operations.

34 f. The board shall administer the fund in a manner that is
35 sufficiently actuarially sound to defray the obligations of the program.
36 The board shall annually evaluate or cause to be evaluated the
37 actuarial soundness of the fund. If the board determines a need for
38 additional assets in order to preserve actuarial soundness, the board
39 may adjust the terms of subsequent advance payment contracts to
40 ensure soundness.

41 g. If the board finds that a surplus in the fund exists, the board may
42 compensate purchasers of advance payment contracts in a manner that
43 the board determines to be appropriate.

44

45 6. (New section) a. The Prepaid Higher Education Expense Board
46 is established as a body corporate and politic in the Executive Branch

1 of State Government and for the purposes of complying with the
2 provisions of Article V, Section IV, paragraph 1 of the New Jersey
3 Constitution, the board is allocated in but not of the Department of
4 State. Notwithstanding this allocation, the board shall be independent
5 of any supervision or control by the department or by any board or
6 officer thereof.

7 b. The board shall consist of 11 members, including the State
8 Treasurer or a designee, the executive director of the Commission on
9 Higher Education or a designee, the executive director of the Higher
10 Education Student Assistance Authority or a designee, the chair of
11 the New Jersey Presidents' Council or a designee; and seven members
12 appointed by the Governor without regard for political affiliation, one
13 upon the recommendation of the Speaker of the General Assembly,
14 one upon the recommendation of the Minority Leader of the General
15 Assembly, one upon the recommendation of the President of the
16 Senate, and one upon the recommendation of the Minority Leader of
17 the Senate. Each member appointed by the Governor shall possess
18 knowledge, skill, and experience in the areas of accounting, actuary,
19 risk management or investment management. Members appointed by
20 the Governor shall serve terms of three years, except that in making
21 the initial appointments, the Governor shall appoint two members to
22 serve for one year, two members to serve for two years, and three
23 members to serve for three years. Any member appointed to fill a
24 vacancy on the board shall be appointed in a like manner and shall
25 serve until a successor qualifies. Members of the board shall serve
26 without compensation but shall be reimbursed for any necessary
27 expenses incurred in the performance of their duties.

28 c. The Governor shall appoint a member of the board to serve as
29 the initial chair of the board. Thereafter, the board shall elect a chair
30 annually. The board shall annually elect a board member to serve as
31 vice-chair and shall designate a secretary-treasurer who need not be a
32 member of the board. The secretary-treasurer shall keep a record of
33 the proceedings of the board and shall be the custodian of all printed
34 material filed with or by the board and of its official seal.
35 Notwithstanding the existence of vacancies on the board, a majority of
36 the members shall constitute a quorum. The board shall take no
37 official action in the absence of a quorum. The board shall meet, at a
38 minimum, on a quarterly basis at the call of the chair.

39 d. Neither the members of the board, nor any officer or employee
40 of the board shall be liable personally for the debts, liabilities or
41 obligations of the program established pursuant to this act.

42

43 7. (New section) The board shall have the powers necessary or
44 proper to carry out the provisions of this act, including, but not limited
45 to, the power to:

46 a. appoint an executive director to serve as the chief administrative

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6

- 1 and operational officer of the board and to perform other duties
- 2 assigned by the board;
- 3 b. adopt an official seal and alter the same at pleasure;
- 4 c. sue and be sued in its own name;
- 5 d. make and enter into all contracts and agreements necessary or
- 6 incidental to the performance of its duties and the execution of its
- 7 powers in accordance with the provisions of P.L.1954, c.48 (C.52:34-
- 8 6 et seq.);
- 9 e. purchase, without advertising for bids or after having rejected all
- 10 bids obtained pursuant to advertising therefor, any materials, supplies,
- 11 goods, services or equipment pursuant to a contract or contracts for
- 12 such materials, supplies, goods, services or equipment entered into on
- 13 behalf of the State by the Division of Purchase and Property;
- 14 f. establish agreements or other transactions with federal, State,
- 15 and local agencies, including institutions of higher education;
- 16 g. invest funds not required for immediate disbursement;
- 17 h. hold, buy, and sell any instruments, obligations, securities, and
- 18 property determined appropriate by the board;
- 19 i. employ personnel, including financial and computer experts, legal
- 20 counsel, accountants, managers and auditors, as may be necessary; to
- 21 fix their compensation; and to promote and discharge the employees
- 22 and agents; all without regard to the provisions of Title 11A of the
- 23 New Jersey Statutes;
- 24 j. solicit and accept gifts, grants, loans, and other aids from any
- 25 source or participate in any other way in any government program to
- 26 carry out the purposes of this act;
- 27 k. require a reasonable length of State residence for qualified
- 28 beneficiaries, as appropriate;
- 29 l. reasonably restrict the number of participants in the county
- 30 college plan and the university plan according to criteria developed by
- 31 the board. A person denied participation solely on the basis of this
- 32 restriction shall be granted priority for participation during the
- 33 succeeding year;
- 34 m. segregate contributions and payments to the fund into various
- 35 accounts;
- 36 n. require and collect administrative fees in connection with any
- 37 transaction and impose reasonable penalties, including default, for
- 38 delinquent payments or for entering into an advance payment contract
- 39 on a fraudulent basis;
- 40 o. procure insurance against any loss in connection with the
- 41 property, assets and activities of the fund or the board;
- 42 p. provide for the receipt of contributions in lump sums or
- 43 installment payments;
- 44 q. impose reasonable time limits on use of the tuition benefits
- 45 provided by the program;
- 46 r. delineate the terms under which payments may be withdrawn

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1 from the fund and impose reasonable fees and charges for withdrawals;
2 s. define for the purposes of this act the average number of hours
3 required for the conferral of an associate degree; the average number
4 of hours required for the conferral of a baccalaureate degree; the
5 average current and projected tuition within the county college system
6 and the average current and projected tuition of the four-year public
7 institutions of higher education;

8 t. determine whether the New Jersey Better Educational Savings
9 Trust (NJBEST) Program established pursuant to N.J.S.18A:71B-35
10 through N.J.S.18A:71B-46 and the New Jersey Prepaid Higher
11 Education Expense Program should be marketed by a single private
12 entity and whether a single private entity should manage both
13 programs on behalf of the board;

14 u. adopt rules and regulations to implement this act; and

15 v. take all actions required so that the program is treated as a
16 qualified State tuition program under section 529 of the federal
17 Internal Revenue Code of 1986, 26 U.S.C.s.529.

18

19 8. (New section) a. The board, acting with the approval of the
20 State Investment Council in the Division of Investment, shall establish
21 a comprehensive investment plan for the purposes of this act and
22 annually review the plan to assure that the program remains actuarially
23 sound. The comprehensive investment plan shall specify the
24 investment policies to be utilized by the board in its administration of
25 the fund. The board may place assets of the fund in savings accounts
26 or use the funds to purchase fixed or variable life insurance or annuity
27 contracts, securities, evidence of indebtedness or other investment
28 products, pursuant to the comprehensive investment plan and in such
29 proportions as may be designated or approved under that plan. The
30 board shall be subject to the "prudent person" standard of care
31 applicable to the Division of Investment in the Department of the
32 Treasury pursuant to subsection b. of section 11 of P.L.1950, c.270
33 (C.52:18A-89). The insurance, annuity, savings or investment
34 products shall be underwritten and offered in compliance with the
35 applicable federal and State laws and regulations and by persons who
36 are duly authorized by applicable federal and State authorities.

37 b. The board may delegate responsibility for administration of the
38 comprehensive investment plan required pursuant to subsection a. of
39 this section to a person the board determines to be qualified. Directly
40 or through the person, the board may contract, in accordance with the
41 provisions of P.L.1954, c.48 (C.52:34-6 et seq.), with a private
42 corporation or institution to provide such services as may be a part of
43 the comprehensive investment plan or as may be deemed necessary for
44 implementation of the comprehensive investment plan, including, but
45 not limited to, providing consolidated billing, individual and collective
46 record keeping and accounting, and asset purchase, control and

1 safekeeping.

2 c. The board shall annually prepare or cause to be prepared a
3 report setting forth in appropriate detail an accounting of the fund and
4 a description of the financial condition of the program at the close of
5 each fiscal year. The report shall be submitted to the Governor, the
6 President of the Senate, the Speaker of the General Assembly, the
7 State Treasurer, the executive director of the New Jersey Commission
8 on Higher Education and the executive director of the Higher
9 Education Student Assistance Authority on or before August 1 each
10 year. In addition, the board shall make the report available to
11 purchasers of advance payment contracts. The board shall provide to
12 the Commission on Higher Education by August 1 each year complete
13 advance payment contract sales information, including projected
14 higher education enrollments of qualified beneficiaries.

15 d. The accounts of the funds shall be subject to annual audits by
16 the State Auditor or a designee. In addition, the board shall
17 commission an annual independent audit of the program. The results
18 of the independent audit shall be provided to the Governor, the
19 President of the Senate, the Speaker of the General Assembly, the
20 State Treasurer, the executive director of the New Jersey Commission
21 on Higher Education and the executive director of the Higher
22 Education Student Assistance Authority. If the board delegates
23 responsibility for the administration of the comprehensive investment
24 plan pursuant to subsection b. of this section, the cost of the
25 independent audit shall be borne by that person.

26 e. The board may make available insurance coverage written
27 exclusively for the purpose of protecting advance payment contracts,
28 and the purchasers or beneficiaries thereof, which may be issued in the
29 form of a group term life policy to purchasers of advance payment
30 contracts.

31 f. The board may solicit proposals for the marketing of the
32 program or may delegate this responsibility to the person who is
33 administering the comprehensive investment plan pursuant to
34 subsection b. of this section. The entity designated pursuant to this
35 subsection shall serve as a centralized marketing agent for the program
36 and shall be solely responsible for the marketing of the program.
37 Materials produced for the purpose of marketing the program shall be
38 submitted to the board for review and approval. Marketing materials
39 shall not be made available or distributed to the public prior to the
40 materials being approved by the board. An institution of higher
41 education may distribute marketing materials produced for the
42 program. The State and the board shall not be liable for
43 misrepresentation of the program by a marketing agent.

44 A single entity may be selected to market both the New Jersey
45 Prepaid Higher Education Expense Program and the New Jersey
46 Better Educational Savings Trust (NJBEST) Program established

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1 pursuant to N.J.S.18A:71B-35 through N.J.S.18A:71B-46.

2 Nothing in this subsection shall preclude the person who is
3 administering the comprehensive investment plan pursuant to
4 subsection b. of this section from marketing both the New Jersey
5 Prepaid Higher Education Expense Program and the New Jersey
6 Better Educational Savings Trust (NJBEST) Program established
7 pursuant to N.J.S.18A:71B-35 through N.J.S.18A:71B-46.

8 g. Statements, reports on distributions and information returns
9 relating to accounts shall be prepared, distributed, and filed to the
10 extent required by section 529 of the federal Internal Revenue Code
11 of 1986, 26 U.S.C. s.529.

12

13 9. (New section) a. The board shall develop an advance payment
14 contract with the assistance of the Office of the Attorney General. An
15 advance payment contract shall be exempt from the provisions of
16 Subtitle 3 of Title 17 of the Revised Statutes and Subtitle 3 of Title
17 17B of the New Jersey Statutes. The contents of the contract shall
18 include, but not be limited to, the following:

19 (1) the amount of the payments and the number of payments
20 required from a purchaser;

21 (2) the terms and conditions under which purchasers are required
22 to remit payments, including, but not limited to, the date or dates upon
23 which each payment is due;

24 (3) provisions for late payment charges and for default;

25 (4) provisions for penalty fees for withdrawals from the fund;

26 (5) the name and date of birth of the qualified beneficiary on whose
27 behalf the contract is drawn and the terms and conditions under which
28 another person may be substituted as the qualified beneficiary;

29 (6) the name of any person who may cancel the contract. The
30 terms of the contract shall specify whether the contract may be
31 canceled by the purchaser, the qualified beneficiary, a specific
32 designated person or any combination of these persons;

33 (7) the terms and conditions under which a contract may be
34 canceled, the name of the person entitled to any refund due as a result
35 of the cancellation of the contract pursuant to those terms and
36 conditions, and the method for determining the amount of refund;

37 (8) the time limitations, if any, within which the qualified
38 beneficiary is required to claim benefits through the program. If time
39 limitations are included in the contract, the time expended by a
40 qualified beneficiary as an active duty member of any of the armed
41 services of the United States shall be added to the period of time
42 permitted to exercise the benefits; and

43 (9) other terms and conditions deemed by the board to be
44 necessary or proper.

45 b. In addition to the provisions of subsection a. of this section an
46 advance payment contract shall include the following:

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- 1 (1) the number of credit hours contracted by the purchaser;
- 2 (2) the plan toward which the credit hours shall be applied;
- 3 (3) the assumption of a contractual obligation by the board to the
- 4 qualified beneficiary to provide for a specified number of credit hours
- 5 of undergraduate instruction at a public institution of higher education,
- 6 not to exceed the average number of credit hours required for the
- 7 conferral of the degree that corresponds to the plan purchased on
- 8 behalf of the qualified beneficiary.

9
10 10. (New section) a. At a minimum, the board shall make advance
11 payment contracts available for two independent plans to be known as
12 the county college plan and the university plan.

13 (1) Through the county college plan, the advance payment contract
14 shall provide prepaid tuition for a specified number of undergraduate
15 credit hours not to exceed the average number of hours required for
16 the conferral of an associate degree. The cost of participation in the
17 county college plan shall be based primarily on the average current and
18 projected tuition within the county college system and the number of
19 years expected to elapse between the purchase of the plan on behalf of
20 a qualified beneficiary and the exercise of the benefits provided in the
21 plan by the qualified beneficiary. Qualified beneficiaries shall bear the
22 cost of any laboratory fees associated with enrollment in specific
23 courses. Each qualified beneficiary shall be classified as a resident for
24 tuition purposes regardless of his actual legal residence.

25 (2) Through the university plan, the advance payment contract
26 shall provide prepaid tuition for a specified number of undergraduate
27 credit hours not to exceed the average number of hours required for
28 the conferral of a baccalaureate degree. The cost of participation in
29 the university plan shall be based primarily on the average current and
30 projected tuition of the four-year public institutions of higher
31 education and the number of years expected to elapse between the
32 purchase of the plan on behalf of a qualified beneficiary and the
33 exercise of the benefits provided in the plan by the beneficiary.
34 Qualified beneficiaries shall bear the cost of any laboratory fees
35 associated with enrollment in specific courses. In the event that a
36 qualified beneficiary fails to be admitted to a four-year public
37 institution of higher education or chooses to attend a county college,
38 the qualified beneficiary may convert the average number of credit
39 hours required for the conferral of an associate degree from a
40 university plan to a county college plan and may retain the remaining
41 credit hours in the university plan or may request a refund for prepaid
42 credit hours in excess of the average number of credit hours required
43 for the conferral of an associate degree. Each qualified beneficiary
44 shall be classified as a resident for tuition purposes regardless of his
45 actual legal residence.

46 b. In addition to the plans required pursuant to subsection a. of this

1 section, the board may make advance payment contracts available for
2 other plans, such as the county college plus university plan whereby
3 the advance payment contract would provide tuition that would allow
4 a qualified beneficiary to attend a county college for an associate
5 degree and then attend a four-year public institution of higher
6 education for a baccalaureate degree.

7 c. The board shall establish procedures for conversions between
8 plans established under the program. The procedures shall include, but
9 not be limited to, the conditions under which a conversion may occur
10 and the method for calculating any refund due.

11 d. A qualified beneficiary may apply a county college plan or a
12 university plan toward any eligible independent institution of higher
13 education. The board shall transfer or cause to have transferred to the
14 eligible independent institution of higher education designated by the
15 qualified beneficiary an amount not to exceed the weighted average
16 tuition purchased under the advance payment contract. In the event
17 that the cost of tuition at the eligible independent institution of higher
18 education is less than the weighted average tuition purchased under
19 the advance payment contract, the amount transferred shall not exceed
20 the actual cost of tuition. A transfer authorized pursuant to this
21 subsection shall not exceed the number of credit hours contracted on
22 behalf of a qualified beneficiary.

23 e. A qualified beneficiary may apply the benefits of an advance
24 payment contract toward an eligible out-of-state institution of higher
25 education. Institutional eligibility for out-of-state institutions of
26 higher education shall be determined by the board, but in making those
27 determinations the board shall recognize that the benefits may only be
28 used at an out-of-state institution of higher education whose students
29 are eligible to receive benefits under section 529 of the federal Internal
30 Revenue Code of 1986, 26 U.S.C. s.529. The board shall transfer or
31 cause to have transferred to the eligible out-of-state institution of
32 higher education designated by the qualified beneficiary an amount not
33 to exceed the weighted average tuition purchased under the advance
34 payment contract. In the event that the cost of tuition at the eligible
35 out-of-state institution of higher education is less than the weighted
36 average tuition purchased under the advance payment contract, the
37 amount transferred shall not exceed the actual cost of tuition. A
38 transfer authorized pursuant to this subsection shall not exceed the
39 number of credit hours contracted on behalf of a qualified beneficiary.

40

41 11. (New section) a. The board shall determine the conditions
42 under which refunds are payable under the program. Unless
43 authorized by the board or under the provisions of this section, a
44 refund shall not exceed the amount paid into the fund by the
45 purchaser. A refund may exceed the amount paid into the fund in the
46 following circumstances:

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12

1 (1) if the qualified beneficiary is awarded a scholarship (or
2 allowance or payment described in subparagraph (B) or (C) of
3 paragraph (1) of subsection (d) of section 135 of the federal Internal
4 Revenue Code of 1986, 26 U.S.C. s.135), the terms of which cover
5 the benefits included in the advance payment contracts, moneys paid
6 for the purchase of the advance payment contracts shall be returned to
7 the purchaser in enrollment period installments coinciding with the
8 matriculation by the qualified beneficiary in amounts equal to the lesser
9 of the original purchase price plus 5% interest compounded annually,
10 or the weighted average tuition purchased under the advance payment
11 contract; and

12 (2) in the event of the death or disability of the qualified
13 beneficiary, moneys paid for the purchase of advance payment
14 contracts shall be returned to the purchaser together with 5% interest
15 compounded annually.

16 b. A refund shall not be authorized through an advance payment
17 contract for any school year partially attended but not completed. For
18 purposes of this subsection, a school year partially attended but not
19 completed means any one enrollment period whereby the student is
20 still enrolled at the conclusion of the official drop-add period, but
21 withdraws before the end of the enrollment period.

22 c. If a qualified beneficiary does not complete a county college plan
23 or university plan, for reasons other than specified in subsection a. of
24 this section, the purchaser shall receive a refund of the amount paid
25 into the fund for the remaining unattended years of the advance
26 payment contract pursuant to rules promulgated by the board and in
27 accordance with the provisions of section 529 of the federal Internal
28 Revenue Code of 1986, 26 U.S.C. s.529.

29

30 12. (New section) Moneys paid into or out of the fund by or on
31 behalf of a purchaser or qualified beneficiary of an advance payment
32 contract for the purposes of financing the cost of qualified higher
33 education expenses under the program are exempt from all claims of
34 creditors of the purchaser or the beneficiary.

35

36 13. (New section) The State or any State agency, county,
37 municipality, or other political subdivision may, by contract or
38 collective bargaining agreement, agree with any employee to remit
39 payments toward advance payment contracts through payroll
40 deductions made by the appropriate officer or officers of the State,
41 State agency, county, municipality, or political subdivision. The
42 payments shall be held and administered in accordance with this act.

43

44 14. (New section) In order to meet the obligations of the board
45 under this act, there shall be paid to the board for deposit in the fund,
46 at the time of distribution, subject to appropriation, such sum, if any,

1 as shall be certified by the chair of the board as necessary to provide
2 that amount at the time of distribution. The chair shall make and
3 deliver to the Governor, or his designee, the certificate stating the
4 sums, if any, required to make available in the fund the amount
5 aforesaid, and the sums so certified shall be appropriated and paid to
6 the board during the then current State fiscal year.

7
8 15. (New section) In the event that the State Treasurer determines
9 the program to be financially infeasible, the State may discontinue the
10 provision of the program. A qualified beneficiary who has been
11 accepted by and is enrolled or is within five years of enrollment in an
12 institution of higher education shall be entitled to exercise the benefits
13 for which he has contracted. All other contract holders shall receive
14 a refund of the amount paid into the fund, plus interest at the
15 prevailing rate.

16
17 16. (New section) a. A qualified beneficiary who graduates from
18 high school with a 3.0 cumulative grade point average on a 4.0 scale
19 in an academic program or a 3.2 cumulative grade point average on a
20 4.0 scale in a vocational-educational program, based upon grades in
21 core curriculum content subject areas as determined by the board, or
22 who graduates in the top 15% of his high school graduating class shall
23 be admitted to a public institution of higher education. In order to be
24 admitted to a public institution of higher education pursuant to this
25 section, the qualified beneficiary shall meet all of the institution's
26 requirements for admittance. This provision shall not be construed to
27 promise or guarantee that a qualified beneficiary shall be admitted to
28 a particular public institution of higher education.

29 b. In order to effectuate the provisions of subsection a. of this
30 section, the board, in consultation with the Commission on Higher
31 Education, shall develop a process to assist qualified beneficiaries in
32 applying to all public institutions of higher education.

33
34 17. (New section) Moneys paid into or out of an account by or on
35 behalf of a contributor or designated beneficiary for the purposes of
36 financing the cost of qualified higher education expenses under the
37 New Jersey Better Educational Savings Trust (NJBEST) Program, are
38 exempt from all claims of creditors of the contributor or the
39 designated beneficiary.

40
41 18. N.J.S.18A:71B-36 is amended to read as follows:

42 18A:71B-36. As used in this article:

43 "Account" means an individual trust account or savings account
44 established in accordance with this article;

45 ["Authority" means the Higher Education Student Assistance
46 Authority;]

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14

1 "Board" means the Prepaid Higher Education Expense Board
2 established pursuant to section 6 of P.L. , c. (C.)(now pending
3 before the Legislature as this bill).

4 "Contributor" means the person or organization contributing to and
5 maintaining an account and having the right to withdraw funds from
6 the account before the account is disbursed to or for the benefit of the
7 designated beneficiary;

8 "Designated beneficiary" means: a. the individual designated at the
9 time the account is opened as the individual whose higher education
10 expenses are expected to be paid from the account; b. the replacement
11 beneficiary if the change in designated beneficiary would not result in
12 a distribution that is included in federal gross income under section
13 529 of the federal Internal Revenue Code of 1986, 26 U.S.C.s.529;
14 and c. in the case of an interest in the program purchased by a state or
15 local government or an organization described in paragraph (3) of
16 subsection (c) of section 501 of the federal Internal Revenue Code of
17 1986, 26 U.S.C.s.501 and exempt from taxation under subsection (a)
18 of section 501 of the federal Internal Revenue Code of 1986, 26
19 U.S.C.s.501, as a part of a scholarship program operated by the
20 government or organization, the individual receiving the interest as a
21 scholarship;

22 "Higher education institution" means an eligible educational
23 institution as defined in or for purposes of section 529 of the federal
24 Internal Revenue Code of 1986, 26 U.S.C.s.529. Higher education
25 institution shall include a proprietary institution if expenses for tuition
26 at the institution would be considered qualified higher education
27 expenses under section 529 of the federal Internal Revenue Code of
28 1986, 26 U.S.C.s.529, but only for degree granting programs licensed
29 or approved by the Commission on Higher Education or for other
30 proprietary institutions as determined by the [authority] board;

31 "Investment Manager" means the Division of Investment in the
32 Department of the Treasury or the private entities authorized to do
33 business in this State that may be designated by the [authority] board
34 to invest the funds of the trust pursuant to the terms of this article;

35 "Member of the family" means a member of the family as defined in
36 or for purposes of section 529 of the federal Internal Revenue Code
37 of 1986, 26 U.S.C.s.529;

38 "Nonqualified withdrawal" means a withdrawal from an account
39 other than: a. a qualified withdrawal; b. a withdrawal made as the
40 result of the death or disability of the designated beneficiary of an
41 account; c. a withdrawal made on account of a scholarship (or
42 allowance or payment described in subparagraph (B) or (C) of
43 paragraph (1) of subsection (d) of section 135 of the federal Internal
44 Revenue Code of 1986, 26 U.S.C.s.135) received by the designated
45 beneficiary, but only to the extent of the amount of that scholarship,
46 allowance or payment; d. a rollover or change in designated

1 beneficiary which would not result in a distribution includible in
2 federal gross income under section 529 of the federal Internal Revenue
3 Code of 1986, 26 U.S.C.s.529; or e. any other withdrawal if the failure
4 of the program to impose a more than de minimis penalty on the
5 withdrawal would cause the program not to be a qualified State tuition
6 program under section 529 of the federal Internal Revenue Code of
7 1986, 26 U.S.C.s.529;

8 "Program" means the "New Jersey Better Educational Savings
9 Trust (NJBEST) Program" established pursuant to this article;

10 "Qualified higher education expenses" means expenses described in
11 paragraph (3) of subsection (e) of section 529 of the federal Internal
12 Revenue Code of 1986, 26 U.S.C.s.529 incurred in connection with
13 the enrollment of a designated beneficiary at a higher education
14 institution;

15 "Qualified withdrawal" means a withdrawal from an account to pay
16 the qualified higher education expenses of the designated beneficiary
17 of the account; but a withdrawal shall not be considered a qualified
18 withdrawal if the failure of the program to impose a more than de
19 minimis penalty on the withdrawal would cause the program not to
20 qualify as a qualified State tuition program under section 529 of the
21 federal Internal Revenue Code of 1986, U.S.C.s.529;

22 "Trust" means the "New Jersey Better Educational Savings Trust"
23 established pursuant to N.J.S.18A:71B-37.

24 (cf: N.J.S.18A:71B-36)

25

26 19. N.J.S.18A:71B-37 is amended to read as follows:

27 18A:71B-37. There is created within the [Higher Education
28 Student Assistance Authority] Prepaid Higher Education Expense
29 Board the New Jersey Better Educational Savings Trust (NJBEST).
30 The trust shall provide a mechanism through which the [authority]
31 board, as trustee, holds accounts established and maintained pursuant
32 to the provisions of this article to finance the cost of qualified higher
33 education expenses.

34 (cf: N.J.S.18A:71B-37)

35

36 20. N.J.S.18A:71B-38 is amended to read as follows:

37 18A:71B-38. The [Higher Education Student Assistance
38 Authority] Prepaid Higher Education Expense Board established
39 pursuant to section 6 of P.L. , c. (C.)(now pending before the
40 Legislature as this bill) shall administer the NJBEST Program. The
41 [authority] board shall have the power to:

42 a. serve as trustee of the trust;

43 b. adopt rules and regulations pursuant to the "Administrative
44 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), necessary to
45 carry out the provisions of this article;

46 c. prescribe and provide appropriate forms for participation in the
47 program;

- 1 d. select an investment manager and any other contractors needed
2 to manage and market the program;
3 e. monitor the investment manager and any other contractors by
4 audits and other reports;
5 f. collect reasonable administrative fees in connection with any
6 contract or transaction relating to the program;
7 g. impose penalties for nonqualified withdrawals;
8 h. take all actions required so that the program is treated as a
9 qualified State tuition program under section 529 of the federal
10 Internal Revenue Code of 1986, 26 U.S.C.s.529; and
11 i. perform any other acts which may be deemed necessary or
12 appropriate to carry out the objects and purposes of this article.
13 (cf: N.J.S.18A:71B-38)

14

15 21. N.J.S.18A:71B-39 is amended to read as follows:

16 18A:71B-39. Neither the members of the [authority] board, nor
17 any officer or employee of the [authority] board shall be liable
18 personally for the debts, liabilities or obligations of the program
19 established pursuant to this article.
20 (cf: N.J.S.18A:71B-39)

21

22 22. N.J.S.18A:71B-40 is amended to read as follows:

23 18A:71B-40. a. The [authority] board shall select an investment
24 manager or managers to invest the funds of the trust or the funds in
25 accounts. In making this selection, any investment manager shall be
26 subject to the "prudent person" standard of care applicable to the
27 Division of Investment in the Department of the Treasury pursuant to
28 subsection b. of section 11 of P.L.1950, c.270 (C.52:18A-89), and the
29 [authority] board shall consider the impact of fees and costs imposed
30 by the manager or managers on yield to contributors.

31 b. The [authority] board may select more than one investment
32 manager and investment instrument for the program if it is in the best
33 interest of contributors and will not interfere with the administration
34 of the program.

35 c. The [authority] board may provide a contributor with a choice
36 of investment managers or investment instruments or both for the
37 program if both of the following conditions exist:

38 (1) the federal Internal Revenue Service has provided guidance that
39 providing a contributor with a choice of investment managers or
40 instruments under a State tuition program will not cause the program
41 to fail to qualify for favorable tax treatment under section 529 of the
42 federal Internal Revenue Code of 1986, 26 U.S.C.s.529; and

43 (2) the [authority] board concludes that a choice of investment
44 managers or of investment instruments is in the best interest of
45 contributors and will not interfere with the administration of the
46 program.

1 d. If the [authority] board terminates the designation of an
2 investment manager to hold accounts, and accounts must be moved
3 from that investment manager to another investment manager, the
4 [authority] board shall select the investment manager and type of
5 investment instrument to which the balance of the account is moved,
6 unless the federal Internal Revenue Service provides guidance that
7 allowing the contributor to select among several investment managers
8 or investment instruments that have been selected by the [authority]
9 board would not cause a program to cease to be a qualified State
10 tuition program for the purposes of section 529 of the federal Internal
11 Revenue Code, 26 U.S.C.s.529.

12 e. The board, upon the effective date of P.L. , c. (C.)(now
13 pending before the Legislature as this bill) and in accordance with the
14 provisions of P.L.1954, c.48 (C.52:34-6 et seq.), shall select an
15 investment manager or managers for the program. If the selection
16 process provided for in this subsection results in an investment
17 manager other than the Division of Investment, the board shall provide
18 for the orderly transfer of accounts and shall ensure that all the rights
19 of the contributors and designated beneficiaries participating in the
20 program as of the effective date of P.L. , c. (C.)(now pending
21 before the Legislature as this bill), are protected.

22 (cf: N.J.S.18A:71B-40)

23

24 23. N.J.S.18A:71B-41 is amended to read as follows:

25 18A:71B-41. a. The program shall be operated as a trust through
26 the use of accounts for designated beneficiaries. An account may be
27 opened by any person who desires to save to pay the qualified higher
28 education expenses of an individual by satisfying each of the following
29 requirements:

30 (1) completing an application in the form prescribed by the
31 [authority] board;

32 (2) paying the one-time application fee established by the
33 [authority] board;

34 (3) making the minimum contribution required by the [authority]
35 board for opening an account;

36 (4) designating the account or accounts to be opened; and

37 (5) in the case of an account to which subsection a. of
38 N.J.S.A.18A:71B-44 would apply, demonstrating to the satisfaction
39 of the [authority] board that either the contributor, if an individual, or
40 the designated beneficiary is a New Jersey resident. The requirement
41 of New Jersey residency for either the contributor or the designated
42 beneficiary would not apply to an account to which subsection b. of
43 N.J.S.18A:71B-44 would apply unless otherwise determined by the
44 [authority] board.

45 b. Except as provided under N.J.S.18A:71B-42, only the
46 contributor may make contributions to an account after the account is

1 opened.

2 c. Contributions to accounts shall be made only in cash, as defined
3 by the [authority] board pursuant to regulations, in accordance with
4 section 529 of the federal Internal Revenue Code of 1986, 26
5 U.S.C.s.529.

6 d. Contributors may withdraw all or part of the balance from an
7 account on sixty days' notice or a shorter period, as may be authorized
8 by the [authority] board pursuant to regulations.

9 e. A contributor may change the designated beneficiary of an
10 account or rollover all or a portion of an account to another account
11 if the change or rollover would not result in a distribution includible
12 in gross income under section 529 of the federal Internal Revenue
13 Code of 1986, 26 U.S.C.s.529, in accordance with procedures
14 established by the [authority] board.

15 f. In the case of any nonqualified withdrawal, a penalty at a level
16 established by the [authority] board and sufficient to be considered a
17 more than de minimis penalty for purposes of section 529 of the
18 federal Internal Revenue Code of 1986, 26 U.S.C.s.529, shall be
19 withheld and paid to the [authority] board for use in operating and
20 marketing the program. The [authority] board may elect not to
21 impose a penalty if that section ceases to include a provision requiring
22 more than de minimis penalties for a program to qualify as a qualified
23 State tuition program.

24 g. If a contributor makes a nonqualified withdrawal and a penalty
25 amount is not withheld pursuant to subsection f. of this section or the
26 amount withheld is less than the amount required to be withheld under
27 that subsection, the contributor shall pay the unpaid portion of the
28 penalty to the [authority] board at the same time that the contributor
29 files a State income tax return for the taxable year of the withdrawal,
30 or if the contributor does not file a return, the unpaid portion of the
31 penalty shall be paid on or before the due date for the filing of that
32 income tax return.

33 h. Each account shall be maintained separately from each other
34 account under the program.

35 i. Separate records and accounting shall be maintained for each
36 account for each designated beneficiary.

37 j. A contributor to or designated beneficiary of any account shall
38 not direct the investment of any contributions to an account or the
39 earnings from the account, except as permitted under section 529 of
40 the federal Internal Revenue Code of 1986, 26 U.S.C.s.529.

41 k. A contributor or a designated beneficiary shall not use an
42 interest in an account as security for a loan. Any pledge of an interest
43 in an account is of no force and effect.

44 l. The maximum contribution for any designated beneficiary shall
45 be determined by the [authority] board pursuant to regulations, in
46 accordance with section 529 of the federal Internal Revenue Code of

1 1986, 26 U.S.C.s.529.

2 m. Statements, reports on distributions and information returns
3 relating to accounts shall be prepared, distributed, and filed to the
4 extent required by section 529 of the federal Internal Revenue Code
5 of 1986, 26 U.S.C.s.529, or regulations issued thereunder.

6 n. The [authority] board may charge, impose and collect
7 reasonable administrative fees and service charges in connection with
8 any agreement, contract or transaction relating to the program. These
9 fees and charges may be imposed directly on contributors or may be
10 taken as a percentage of the investment earnings on accounts.

11 o. The State or any State agency, municipality, or other political
12 subdivision may, by contract or collective bargaining agreement, agree
13 with any employee to remit contributions to accounts through payroll
14 deductions made by the appropriate officer or officers of the State,
15 State agency, county, municipality, or political subdivision. The
16 contributions shall be held and administered in accordance with this
17 act.

18 (cf: N.J.S.18A:71B-41)

19

20 24. N.J.S.18A:71B-42 is amended to read as follows:

21 18A:71B-42. a. An amount of no less than \$500 shall be provided
22 by the State for the qualified higher education expenses of a
23 designated beneficiary at the time of a qualified withdrawal provided
24 that:

25 (1) the contributor demonstrates, to the satisfaction of the
26 [authority] board, that the contributor participated in the program for
27 at least four years by making a qualifying minimum initial deposit or
28 qualifying minimum annual contributions, or both, as shall be
29 determined by the [authority] board, for a designated beneficiary;

30 (2) the designated beneficiary demonstrates, to the satisfaction of
31 the [authority] board, attendance or enrollment in a higher education
32 institution in this State, at the time of initial attendance or enrollment
33 in the higher education institution; and

34 (3) either the contributor, if an individual, or the designated
35 beneficiary demonstrates, to the satisfaction of the [authority] board,
36 that the contributor or designated beneficiary is a New Jersey resident.

37 b. The amount provided under subsection a. of this section shall
38 meet the requirements of a qualified scholarship within the meaning of
39 section 117 of the federal Internal Revenue Code of 1986, 26
40 U.S.C.s.117, for a designated beneficiary satisfying the requirements
41 of subsection a. of this section.

42 c. A designated beneficiary shall not receive more than one State
43 scholarship provided pursuant to subsection a. of this section.

44 (cf: N.J.S.18A:71B-42)

45

46 25. N.J.S.18A:71B-43 is amended to read as follows:

47 18A:71B-43. Annually, the [authority] board shall determine a

1 dollar amount of an account, which shall not be less than \$25,000,
2 which shall not be considered in evaluating the financial needs of a
3 student enrolled in an institution of higher education located in the
4 State of New Jersey, or be deemed a financial resource or a form of
5 financial aid or assistance to a student, for purposes of determining the
6 eligibility of a student for any scholarship, grant, or monetary
7 assistance awarded by the State; nor shall the amount of any account
8 as determined by the [authority] board provided for a designated
9 beneficiary under this article reduce the amount of any scholarship
10 grant or monetary assistance which the student is entitled to be
11 awarded by the State.

12 (cf: N.J.S.18A:71B-43)

13

14 26. N.J.S.18A:71B-44 is amended to read as follows:

15 18A:71B-44. a. If the investment manager is the Division of
16 Investment in the Department of the Treasury, in order to assure the
17 availability of principal of any amount contributed under this article,
18 there shall be paid to the [authority] board for deposit in the trust, at
19 the time of distribution, subject to appropriation, such sum, if any, as
20 shall be certified by the [chairperson] chair of the [authority] board
21 as necessary to provide that amount at the time of distribution. The
22 [chairperson] chair shall make and deliver to the Governor, or his
23 designee, the certificate stating the sums, if any, required to make
24 available in the trust the amount aforesaid, and the sums so certified
25 shall be appropriated and paid to the [authority] board during the then
26 current State fiscal year.

27 b. If the investment manager is a private entity, the investment of
28 the principal and interest of any amount contributed under this article
29 shall be backed by the full faith and credit of the United States or be
30 fully insured by the Federal Deposit Insurance Corporation or other
31 similar insurer backed by the full faith and credit of the United States.
32 No account balance shall exceed the maximum amount of insurance
33 provided by the insurer. No investment is permitted in derivatives of
34 eligible securities, and any investment must be designed to balance
35 prospective payments according to the guidelines established.

36 (cf: N.J.S.18A:71B-44)

37

38 27. N.J.S.18A:71B-45 is amended to read as follows:

39 18A:71B-45. a. Nothing in this article shall be construed to:

40 (1) guarantee that a designated beneficiary will be admitted to a
41 higher education institution or be allowed to continue enrollment at or
42 graduate from a higher education institution after admission;

43 (2) establish State residency for a person merely because the
44 person is a designated beneficiary; or

45 (3) guarantee that amounts saved pursuant to the program will be
46 sufficient to cover the qualified higher education expenses of a

1 designated beneficiary.

2 b. Nothing in this article establishes any obligation of this State or
3 any agency or instrumentality of this State to guarantee for the benefit
4 of any contributor or designated beneficiary any of the following:

5 (1) the rate of interest or other return on any account; or

6 (2) the payment of interest or other return on any account.

7 c. Nothing in this article establishes any obligation or liability of
8 this State or any agency or instrumentality of this State with respect
9 to any federal or State tax liability of any contributor or designated
10 beneficiary in this program.

11 d. Under regulations promulgated by the [authority] board, every
12 contract and application that may be used in connection with a
13 contribution to an account shall clearly indicate that the account is not
14 insured by this State nor is the investment return guaranteed by this
15 State.

16 (cf: N.J.S.18A:71B-45)

17

18 28. N.J.S.18A:71B-46 is amended to read as follows:

19 18A:71B-46. If the Congress of the United States enacts legislation
20 that exempts educational savings accounts from federal income
21 taxation, sections N.J.S.18A:71B-42 and N.J.S.18A:71B-43 shall
22 apply with respect to such educational savings accounts as if they were
23 accounts established under this act and the beneficiaries of the
24 accounts were designated beneficiaries subject to the approval of the
25 [New Jersey Higher Education Assistance Authority] board.

26 (cf: N.J.S.18A:71B-46)

27

28 29. (New section) Regulations adopted by the New Jersey Higher
29 Education Student Assistance Authority pertaining to the New Jersey
30 Better Educational Savings Trust (NJBEST) Program shall continue
31 with full force and effect under the board for a period of one year from
32 the effective date of this act or until amended, continued or repealed
33 by the board pursuant to law.

34

35 30. Section 13 of P.L.1997, c.237 (C.54A:6-25) is amended to
36 read as follows:

37 13. a. Gross income shall not include earnings on an education
38 individual retirement account or a qualified State tuition program
39 account until the earnings are distributed from the account, at which
40 time they shall be includible in the gross income of the distributee
41 except as provided in this section.

42 b. Gross income shall not include qualified distributions as defined
43 in paragraph (3) of subsection c. of this section.

44 c. For purposes of this section:

45 (1) "Education individual retirement account" means an education
46 retirement account as defined pursuant to paragraph (1) of subsection

1 (b) of section 530 of the federal Internal Revenue Code of 1986, 26
2 U.S.C. s.530.

3 (2) "Qualified State tuition program account" means an account
4 established pursuant to the "New Jersey Better Educational Savings
5 Trust (NJBEST) Program," (N.J.S.18A:71B-35 et seq.) , an account
6 established pursuant to the "New Jersey Prepaid Higher Education
7 Expense Program,"(P.L. , c. (C.))(now pending before the
8 Legislature as this bill) or an account established pursuant to any
9 qualified State tuition program, as defined pursuant to subsection (b)
10 of section 529 of the federal Internal Revenue Code of 1986,
11 26 U.S.C. s.529 or a tuition credit or certificate purchased pursuant to
12 any such program.

13 (3) "Qualified distribution" means any of the following:

14 (a) a distribution from a qualified State tuition program account
15 that is used for qualified higher education expenses as defined pursuant
16 to paragraph (3) of subsection (e) of section 529 of the federal Internal
17 Revenue Code of 1986, 26 U.S.C. s.529;

18 (b) a rollover from one account to another account as described in
19 clause (i) of subparagraph (C) of paragraph (3) of subsection (c) of
20 section 529 or paragraph (5) of subsection (d) of section 530 of the
21 federal Internal Revenue Code of 1986, 26 U.S.C. s.529 or 530;

22 (c) a change in designated beneficiaries of an account as described
23 in clause (ii) of subparagraph (C) of paragraph (3) of subsection (c) of
24 section 529 or paragraph (6) of subsection (d) of section 530 of the
25 federal Internal Revenue Code of 1986, 26 U.S.C. s.529 or 530;

26 d. The portion of a distribution from an education individual
27 retirement account or a qualified State tuition program account that is
28 attributable to earnings shall be determined in accordance with the
29 principles of section 72 of the federal Internal Revenue Code of 1986,
30 26 U.S.C. s.72, as applied for purposes of sections 529 and 530 of the
31 federal Internal Revenue Code of 1986, 26 U.S.C. ss.529 and 530.

32 (cf: P.L.1999, c.116, s.1)

33

34 31. There is appropriated from the General Fund to the Prepaid
35 Higher Education Expense Board in, but not of, the Department of
36 State \$250,000 to effectuate the provisions of this act.

37

38 32. This act shall take effect immediately.

39

40

41

STATEMENT

42

43 This bill is entitled the "New Jersey Prepaid Higher Education
44 Expense Program Act of 2000." It establishes the New Jersey Prepaid
45 Higher Education Expense Program to provide a mechanism through
46 which the cost of tuition may be paid in advance of enrollment in an

1 institution of higher education at a rate lower than the cost at the time
2 of actual enrollment. The bill provides for the creation of the Prepaid
3 Higher Education Expense Board in, but not of, the Department of
4 State. The board will consist of the State Treasurer, the executive
5 director of the Commission on Higher Education, the executive
6 director of the Higher Education Student Assistance Authority, the
7 chair of the New Jersey Presidents' Council, or their designees, and
8 seven members appointed by the Governor who will possess
9 knowledge, skill and experience in the areas of accounting, actuary,
10 risk management or investment management. The board will be
11 responsible for administering the New Jersey Prepaid Higher
12 Education Expense Program.

13 The board, with the assistance of the Office of the Attorney
14 General, will develop an advance payment contract. The bill sets
15 forth the following provisions that must be included in an advance
16 payment contract:

- 17 - the amount of the payment and the number of payments required;
- 18 - the terms and conditions under which a purchaser will remit
19 payments, including, but not limited to, the dates upon which each
20 payment will be due;
- 21 - provisions for late payment charges and for default;
- 22 - provisions for penalty fees for withdrawals from the fund;
- 23 - the name and date of birth of the qualified beneficiary on whose
24 behalf the contract is drawn and the terms and conditions under which
25 another person may be substituted as the qualified beneficiary;
- 26 - the name of any person who may cancel the contract;
- 27 - the terms and conditions under which a contract may be canceled,
28 the name of the person entitled to any refund due as a result of the
29 cancellation, and the amount of refund, if any, due to the person
30 named;
- 31 - the time limitations, if any, within which the qualified beneficiary
32 must claim benefits through the program; and
- 33 - other terms and conditions deemed by the board to be necessary
34 or proper.

35 In addition to these general provisions, the bill also requires that
36 the advance payment contract include specific provisions, including the
37 number of credit hours contracted by the purchaser and whether the
38 credit hours will be applied toward a four-year public institution of
39 higher education or a county college. The advance payment contract
40 will also include a provision obligating the board to provide to the
41 qualified beneficiary the specified number of credit hours of
42 undergraduate instruction at a public institution of higher education,
43 not to exceed the average number of credit hours required for the
44 conferral of the degree that corresponds to the plan purchased on
45 behalf of the qualified beneficiary.

46 Under the bill, the board will be required to make advance payment

1 contracts available for two independent plans, at a minimum, to be
2 known as the county college plan and the university plan. Through a
3 county college plan, the advance payment contract will provide
4 prepaid tuition for a specified number of undergraduate credit hours
5 not to exceed the average number of hours required for the conferral
6 of an associate degree. Through a university plan, the advance
7 payment contract will provide prepaid tuition for a specified number
8 of undergraduate credit hours not to exceed the average number of
9 hours required for the conferral of a baccalaureate degree. The cost of
10 participating in each of these plans will be based primarily on the
11 average current and projected tuition within the county college system
12 or the four-year public institutions of higher education system,
13 respectively, and the number of years expected to elapse between the
14 purchase of the plan and the exercise of the benefits by the qualified
15 beneficiary.

16 The bill permits a county college plan or a university plan to be
17 applied toward any independent institution of higher education. Under
18 these circumstances, the board will transfer to these institutions an
19 amount not to exceed the weighted average tuition purchased under
20 the advance payment contract. If the costs at the independent
21 institution of higher education are less than the weighted average
22 tuition purchased under the advance payment contract, then the
23 amount transferred may not exceed the actual cost of tuition.

24 The bill also permits the benefits of an advance payment contract to
25 be applied toward an eligible out-of-state institution of higher
26 education. Under these circumstances, the board will transfer to these
27 institutions an amount not to exceed the weighted average tuition
28 purchased under the advance payment contract. If the costs at the
29 out-of-state institution are less than the weighted average tuition
30 purchased under the advance payment contract, then the amount
31 transferred may not exceed the actual cost of tuition.

32 The bill guarantees that in the event that the moneys in the fund are
33 insufficient to offset the obligations of the board, then the State will
34 meet those obligations. As a measure of protection for the State, the
35 State Treasurer may discontinue the program if it is determined that
36 the program is financially infeasible. Under these conditions, a
37 qualified beneficiary who has been accepted by and is enrolled, or is
38 within five years of enrollment, in an institution of higher education
39 will be entitled to exercise the benefits for which he has contracted.
40 All other contract holders will receive a refund of the amount paid into
41 the fund, plus interest at the prevailing rate.

42 The bill provides that a qualified beneficiary who graduates from
43 high school with a 3.0 cumulative grade point average on a 4.0 scale
44 in an academic program or a 3.2 cumulative grade point average on a
45 4.0 scale in a vocational-educational program, based upon grades in
46 core curriculum content subject areas, or who graduates in the top

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25

1 15% of his high school graduating class will be admitted to a public
2 institution of higher education. The qualified beneficiary must,
3 however, meet all of the institution's requirements for admittance.

4 The bill also amends the law establishing the New Jersey Better
5 Educational Savings Trust (NJBEST) Program. The responsibility for
6 the program's administration is shifted from the Higher Education
7 Student Assistance Authority to the Prepaid Higher Education
8 Expense Board, which is also administering the New Jersey Prepaid
9 Higher Education Expense Program. The bill also provides that the
10 board must, after the effective date of the act, select an investment
11 manager for the program pursuant to the provisions of the State public
12 contracting law. In the event that the investment manager changes due
13 to this provision, the board must provide for the orderly transfer of
14 accounts and must ensure that all the rights of the contributors and
15 designated beneficiaries are protected.

16 The bill also amends the State tax code to specifically include the
17 New Jersey Prepaid Higher Education Expense Program as a qualified
18 State tuition program under which the earnings are not included in
19 gross income until they are distributed from the account.

SENATE EDUCATION COMMITTEE

STATEMENT TO

SENATE, No. 2054

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 15, 2001

The Senate Education Committee reports favorably and with committee amendments Senate Bill No. 2054.

As amended, this bill establishes the New Jersey Prepaid Higher Education Expense Program to provide a mechanism through which the cost of tuition may be paid in advance of enrollment in an institution of higher education at a rate lower than the cost at the time of actual enrollment.

The bill creates the NJBEST and Prepaid Higher Education Expense Board in, but not of, the Department of State, which would consist of the State Treasurer, the executive director of the Commission on Higher Education, the executive director of the Higher Education Student Assistance Authority, the chair of the New Jersey Presidents' Council, or their designees, and seven members appointed by the Governor, who will possess knowledge, skill and experience in the areas of accounting, actuary, risk management or investment management. The board would be responsible for administering the New Jersey Prepaid Higher Education Expense Program.

The bill directs the board, with the assistance of the Office of the Attorney General, to develop an advance payment contract. The following provisions must be included in the contract:

- the amount of the payment and the number of payments required;
- the terms and conditions under which a purchaser will remit payments, including, but not limited to, the dates upon which each payment will be due;
 - provisions for late payment charges and for default;
 - provisions for penalty fees for withdrawals from the fund;
- the name and date of birth of the qualified beneficiary on whose behalf the contract is drawn and the terms and conditions under which another person may be substituted as the qualified beneficiary;
 - the name of any person who may cancel the contract;
- the terms and conditions under which a contract may be canceled, the name of the person entitled to any refund due as a result of the cancellation, and the amount of refund, if any, due to the person named;

- the time limitations, if any, within which the qualified beneficiary must claim benefits through the program;
- the terms and conditions, if any, under which a purchaser may designate another individual as a successor owner of the contract; and
- other terms and conditions deemed by the board to be necessary or proper.

In addition to these general provisions, the bill also requires that the advance payment contract include specific provisions, including the number of credit hours contracted by the purchaser and whether the credit hours will be applied toward a four-year public institution of higher education or a county college. The advance payment contract will also include a provision obligating the board to provide to the qualified beneficiary the specified number of credit hours of undergraduate instruction at a public institution of higher education, not to exceed the maximum number of credit hours which may be purchased under the program for the associate degree or the baccalaureate degree, as appropriate.

The bill requires the board to make advance payment contracts available for two independent plans, at a minimum, to be known as the county college plan and the university plan. Through a county college plan, the advance payment contract will provide prepaid tuition for a specified number of undergraduate credit hours not to exceed the maximum number of hours which may be purchased under the program for an associate degree. Through a university plan, the advance payment contract will provide prepaid tuition for a specified number of undergraduate credit hours not to exceed the maximum number of hours which may be purchased under the program for a baccalaureate degree. The cost of participating in each of these plans will be based primarily on the average current and projected tuition within the county college system or the four-year public institutions of higher education system, respectively, and the number of years expected to elapse between the purchase of the plan and the exercise of the benefits by the qualified beneficiary.

The bill permits a county college plan or a university plan to be applied toward any independent institution of higher education. Under these circumstances, the board will transfer to these institutions an amount not to exceed the weighted average tuition purchased under the advance payment contract. If the costs at the independent institution of higher education are less than the weighted average tuition purchased under the advance payment contract, then the amount transferred may not exceed the actual cost of tuition.

The bill also permits the benefits of an advance payment contract to be applied toward an eligible out-of-state institution of higher education. Under these circumstances, the board will transfer to these institutions an amount not to exceed the weighted average tuition purchased under the advance payment contract. If the costs at the out-of-state institution are less than the weighted average tuition purchased under the advance payment contract, then the amount

transferred may not exceed the actual cost of tuition.

The bill guarantees that if the moneys in the fund are insufficient to offset the obligations of the board, then the State will meet those obligations. As a measure of protection for the State, the State Treasurer may discontinue the program if it is determined that the program is financially infeasible. Under these conditions, a qualified beneficiary who has been accepted by and is enrolled, or is within five years of enrollment, in an institution of higher education will be entitled to exercise the benefits for which the beneficiary has contracted. All other contract holders will receive a refund of the amount paid into the fund.

The bill provides that a qualified beneficiary who graduates from high school with a 3.0 cumulative grade point average on a 4.0 scale in an academic program or a 3.2 cumulative grade point average on a 4.0 scale in a vocational education program, based upon grades in core curriculum content subject areas, or who graduates in the top 15% of his high school graduating class will be admitted to a public institution of higher education. The qualified beneficiary must, however, meet all of the institution's requirements for admittance.

The bill also amends the law establishing the New Jersey Better Educational Savings Trust (NJBEST) Program. The responsibility for the program's administration is shifted from the Higher Education Student Assistance Authority to the NJBEST and Prepaid Higher Education Expense Board, which is also administering the New Jersey Prepaid Higher Education Expense Program. The bill also provides that the board must, after the effective date of the act, select an investment manager for the program pursuant to the provisions of the State public contracting law. In the event that the investment manager changes due to this provision, the board must provide for the orderly transfer of accounts and must ensure that all the rights of the contributors and designated beneficiaries are protected.

The bill also amends the State gross income tax code to specifically include the New Jersey Prepaid Higher Education Expense Program as a qualified State tuition program under which the earnings are not included in gross income until they are distributed from the account.

Amendments were adopted which:

- rename the board created to administer the program the NJBEST and Prepaid Higher Education Expense Board in order to reflect its new responsibility for the NJBEST program;
- allow the Prepaid Higher Education Expense Board to determine whether mandatory fees charged by institutions of higher education will be included in tuition costs and thereby covered by the advance payment contract;
- clarify that under the advance payment contract a public institution of higher education at which a qualified beneficiary is enrolled will be paid an amount equal to the tuition rate at the time the benefits are exercised for the number of credit hours purchased;
- permit the board to determine whether to impose limits on the

total amount of time that the qualified beneficiary is permitted to exercise the benefits under the program;

- set forth in greater detail the types of services that may be necessary to implement the program and clarify that these services may be provided either by a single or multiple entities;

- provide that the advance payment contract will set forth the terms and conditions, if any, under which a purchaser may designate another individual as a successor owner of the contract;

- clarify that the board will define the maximum number of credit hours that may be purchased under the program for an associate degree and a baccalaureate degree;

- clarify that a qualified beneficiary would only be considered a resident for tuition purposes during the period in which benefits under the program were being utilized;

- permit the board to allow the qualified beneficiary to exercise benefits under the program rather than receive a refund, if the beneficiary is the recipient of a certain type of scholarship, for example, one that may cover both tuition and room and board;

- permit a refund in the event of a conversion from the university to the county college plan that takes into account the difference in the cost of credit hours under the university plan and the county college plan;

- provide that if the State Treasurer discontinues the program, a qualified beneficiary, other than one who has been accepted by, is enrolled or is within five years of enrollment in an institution of higher education, shall be entitled to receive a refund of only the amount paid into the fund, rather than the amount paid into the fund plus interest at the prevailing rate; and

- require that if the investment manager for NJBEST is a private entity, the investment of the amounts contributed under the program will be made according to an investment plan approved by the State Investment Council in the Division of Investment.

As reported, this bill is identical to the First Reprint of the Assembly Committee Substitute for Assembly, Nos. 1622 and 2296 with Senate Education Committee amendments.

[First Reprint]

SENATE, No. 2054

STATE OF NEW JERSEY
209th LEGISLATURE

INTRODUCED JANUARY 22, 2001

Sponsored by:

Senator JOHN O. BENNETT

District 12 (Monmouth)

Senator DIANE ALLEN

District 7 (Burlington and Camden)

Co-Sponsored by:

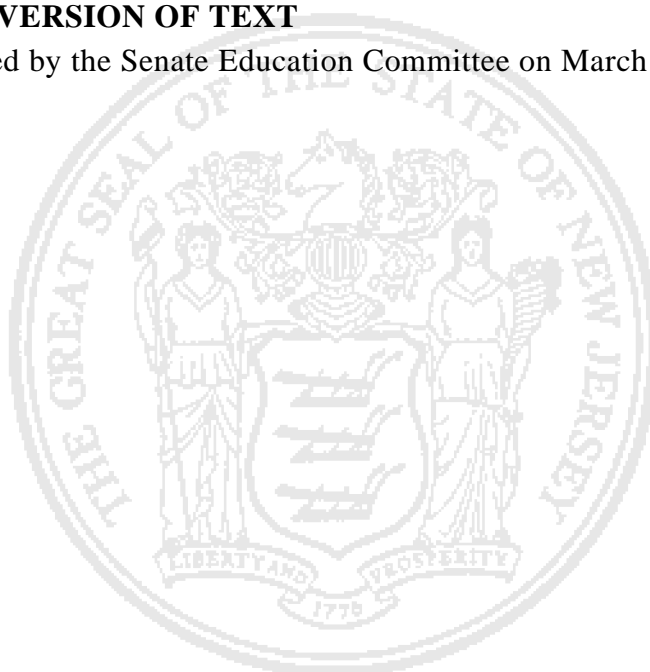
Senators Bark and Turner

SYNOPSIS

Establishes New Jersey Prepaid Higher Education Expense Program.

CURRENT VERSION OF TEXT

As reported by the Senate Education Committee on March 15, 2001, with amendments.



(Sponsorship Updated As Of: 6/29/2001)

1 AN ACT establishing a Prepaid Higher Education Expense Program,
2 amending and supplementing Title 18A of the New Jersey Statutes
3 and making an appropriation.

4
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

7
8 1. (New section) Sections 1 through 16 of this act shall be known
9 and may be cited as the "New Jersey Prepaid Higher Education
10 Expense Program Act of 2000."

11
12 2. (New section) The Legislature finds and declares: that
13 educational opportunity at the college and university level is a critical
14 State interest which is linked to the needs of the State to ensure a
15 well-educated work force; that educational opportunity is best ensured
16 through the provision of institutions of higher education which are
17 geographically and financially accessible; that it is in the best interests
18 of this State to adopt and foster mechanisms which will encourage its
19 citizens to engage in the timely financial planning which is necessary
20 to guarantee that students will have the financial resources necessary
21 to pursue a higher education given the annually escalating level of
22 resources which such attendance requires; and that one such
23 mechanism which has proven successful in some other states is the
24 establishment of a program through which ¹[many] a portion¹ of the
25 costs associated with attendance at institutions of higher education
26 may be paid in advance and fixed at a guaranteed level for the
27 duration of undergraduate enrollment.

28
29 3. (New section) As used in sections 1 through 16 of this act:
30 "Advance payment contract" means a contract entered into by the
31 board and a purchaser pursuant to the provisions of this act;

32 "Board" means the ¹NJBEST and¹ Prepaid Higher Education
33 Expense Board established pursuant to section 6 of this act;

34 "Eligible independent institution of higher education" means those
35 institutions of higher education incorporated and located in this State,
36 which, by virtue of law or character or license, are nonprofit
37 educational institutions empowered to grant academic degrees and
38 which provide a level of education which is equivalent to the education
39 provided by the State's public institutions of higher education as
40 attested by the receipt of and continuation of regional accreditation by
41 the Middle States Association of Colleges and Schools, and which are

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SED committee amendments adopted March 15, 2001.

1 eligible to receive State aid under the provisions of the Constitution of
2 the United States and the Constitution of the State of New Jersey and
3 whose students are eligible to receive benefits under section 529 of the
4 federal Internal Revenue Code of 1986, 26 U.S.C. s.529. ¹"Eligible
5 independent institution of higher education" shall include a proprietary
6 institution if expenses for tuition at the institution would be considered
7 qualified higher education expenses under section 529 of the federal
8 Internal Revenue Code of 1986, 26 U.S.C.s.529, but only for degree
9 granting programs licensed or approved by the Commission on Higher
10 Education or for other proprietary institutions as determined by the
11 board.¹ "Eligible independent institution of higher education" does not
12 include any educational institution dedicated primarily to the
13 preparation or training of ministers, priests, rabbis, or other
14 professional persons in the field of religion;

15 "Fund" means the Prepaid Higher Education Expense Trust Fund
16 established pursuant to section 5 of this act;

17 "Institution of higher education" means an eligible educational
18 institution as defined in or for purposes of section 529 of the federal
19 Internal Revenue Code of 1986, 26 U.S.C.s.529. ¹["Institution of
20 higher education" shall include a proprietary institution if expenses for
21 tuition at the institution would be considered qualified higher
22 education expenses under section 529 of the federal Internal Revenue
23 Code of 1986, 26 U.S.C.s.529, but only for degree granting programs
24 licensed or approved by the Commission on Higher Education or for
25 other proprietary institutions as determined by the board]¹;

26 "Program" means the New Jersey Prepaid Higher Education
27 Expense Program established pursuant to section 4 of this act;

28 "Public institution of higher education" means Rutgers, The State
29 University, the State colleges or universities established pursuant to
30 chapter 64 of Title 18A of the New Jersey Statutes, the New Jersey
31 Institute of Technology, the University of Medicine and Dentistry of
32 New Jersey, the county colleges and any other public university or
33 college now or hereafter established or authorized by State law. A
34 public institution of higher education is an institution whose students
35 are eligible to receive benefits under section 529 of the federal Internal
36 Revenue Code of 1986, 26 U.S.C. s.529;

37 "Purchaser" means a person who makes or is obligated to make
38 payments in accordance with an advance payment contract;

39 "Qualified beneficiary" means: a. a resident of this State at the time
40 a purchaser enters into an advance payment contract on behalf of the
41 resident; or b. a nonresident who is the child of a noncustodial parent
42 who is a resident of the State at the time that the noncustodial parent
43 enters into an advance payment contract on behalf of the child;

44 "Tuition" means the charges imposed by an institution of higher
45 education for enrollment at the institution. ¹The NJBEST and Prepaid
46 Higher Education Expense Board shall determine whether mandatory

1 fees charged by institutions of higher education shall be included in the
2 definition of tuition.¹

3
4 4. (New section) a. There is established the New Jersey Prepaid
5 Higher Education Expense Program to provide a means for payment
6 of the costs of tuition in advance of enrollment at ¹[an] a public¹
7 institution of higher education. Moneys remitted in accordance with
8 advance payment contracts shall be combined and invested in a manner
9 that ¹[yields, at a minimum,] is intended to yield¹ sufficient interest to
10 generate the difference between the prepaid amount and the average
11 in-state tuition costs at public institutions of higher education in the
12 State at the time that the benefits are exercised. ¹The program shall
13 pay to the public institution of higher education at which the qualified
14 beneficiary is enrolled an amount equal to the institution's tuition rate
15 at the time the benefits are exercised.¹

16 b. The program shall be administered by the ¹NJBEST and¹
17 Prepaid Higher Education Expense Board established pursuant to
18 section 6 of this act.

19
20 5. (New section) a. There is created within the ¹NJBEST and¹
21 Prepaid Higher Education Expense Board the Prepaid Higher
22 Education Expense Trust Fund. The fund shall consist of State
23 appropriations, moneys acquired from other governmental or private
24 sources, and moneys remitted in accordance with advance payment
25 contracts. Dividends, interest, and gains accruing to the fund shall
26 increase the total funds available for the program.

27 b. Any funds associated with contracts for which refunds are due,
28 but have not been claimed, shall increase the total funds available for
29 the program. However, the board shall establish procedures for
30 notifying purchasers of any unclaimed refund and shall establish a time
31 period after which a refund may not be claimed.

32 c. Any balance contained in the fund at the end of a fiscal year shall
33 remain therein and shall be available for carrying out the purposes of
34 the program.

35 d. The assets of the fund shall be maintained, invested, and
36 expended solely for the purposes of this act and shall not be loaned,
37 transferred, or otherwise used by the State for any purpose other than
38 the purposes of this act. This subsection shall not be construed to
39 prohibit the board from investing in, by purchase or otherwise, bonds,
40 notes or other obligations of the State or an agency or instrumentality
41 of the State.

42 e. Unless otherwise specified by the board, assets of the fund shall
43 be expended in the following order of priority:

44 (1) to make payments to institutions of higher education on behalf
45 of qualified beneficiaries;

46 (2) to make refunds upon cancellation of advance payment

1 contracts; and

2 (3) to pay the costs of program administration and operations.

3 f. The board shall administer the fund in a manner that is
4 sufficiently actuarially sound to defray the obligations of the program.
5 The board shall annually evaluate or cause to be evaluated the
6 actuarial soundness of the fund. If the board determines a need for
7 additional assets in order to preserve actuarial soundness, the board
8 may adjust the terms of subsequent advance payment contracts to
9 ensure soundness.

10 g. If the board finds that a surplus in the fund exists, the board may
11 compensate purchasers of advance payment contracts in a manner that
12 the board determines to be appropriate.

13

14 6. (New section) a. The ¹NJBEST and¹ Prepaid Higher Education
15 Expense Board is established as a body corporate and politic in the
16 Executive Branch of State Government and for the purposes of
17 complying with the provisions of Article V, Section IV, paragraph 1
18 of the New Jersey Constitution, the board is allocated in ¹1 but not
19 of ¹1 the Department of State. Notwithstanding this allocation, the
20 board shall be independent of any supervision or control by the
21 department or by any board or officer thereof.

22 b. The board shall consist of 11 members, including the State
23 Treasurer or a designee, the executive director of the Commission on
24 Higher Education or a designee, the executive director of the Higher
25 Education Student Assistance Authority or a designee, the chair of
26 the New Jersey Presidents' Council or a designee; and seven members
27 appointed by the Governor without regard for political affiliation, one
28 upon the recommendation of the Speaker of the General Assembly,
29 one upon the recommendation of the Minority Leader of the General
30 Assembly, one upon the recommendation of the President of the
31 Senate, and one upon the recommendation of the Minority Leader of
32 the Senate. Each member appointed by the Governor shall possess
33 knowledge, skill, and experience in the areas of accounting, actuary,
34 risk management or investment management. Members appointed by
35 the Governor shall serve terms of three years, except that in making
36 the initial appointments, the Governor shall appoint two members to
37 serve for one year, two members to serve for two years, and three
38 members to serve for three years. Any member appointed to fill a
39 vacancy on the board shall be appointed in a like manner and shall
40 serve until a successor qualifies. Members of the board shall serve
41 without compensation but shall be reimbursed for any necessary
42 expenses incurred in the performance of their duties.

43 c. The Governor shall appoint a member of the board to serve as
44 the initial chair of the board. Thereafter, the board shall elect a chair
45 annually. The board shall annually elect a board member to serve as
46 vice-chair and shall designate a secretary-treasurer who need not be a

1 member of the board. The secretary-treasurer shall keep a record of
2 the proceedings of the board and shall be the custodian of all printed
3 material filed with or by the board and of its official seal.
4 Notwithstanding the existence of vacancies on the board, a majority of
5 the members shall constitute a quorum. The board shall take no
6 official action in the absence of a quorum. The board shall meet, at a
7 minimum, on a quarterly basis at the call of the chair.

8 d. Neither the members of the board, nor any officer or employee
9 of the board shall be liable personally for the debts, liabilities or
10 obligations of the program established pursuant to this act.

11

12 7. (New section) The board shall have the powers necessary or
13 proper to carry out the provisions of this act, including, but not limited
14 to, the power to:

15 a. appoint an executive director to serve as the chief administrative
16 and operational officer of the board and to perform other duties
17 assigned by the board;

18 b. adopt an official seal and alter the same at pleasure;

19 c. sue and be sued in its own name;

20 d. make and enter into all contracts and agreements necessary or
21 incidental to the performance of its duties and the execution of its
22 powers in accordance with the provisions of P.L.1954, c.48 (C.52:34-
23 6 et seq.);

24 e. purchase, without advertising for bids or after having rejected all
25 bids obtained pursuant to advertising therefor, any materials, supplies,
26 goods, services or equipment pursuant to a contract or contracts for
27 such materials, supplies, goods, services or equipment entered into on
28 behalf of the State by the Division of Purchase and Property;

29 f. establish agreements or other transactions with federal, State,
30 and local agencies, including institutions of higher education;

31 g. invest funds not required for immediate disbursement;

32 h. hold, buy, and sell any instruments, obligations, securities, and
33 property determined appropriate by the board;

34 i. employ personnel, including financial and computer experts, legal
35 counsel, accountants, managers and auditors, as may be necessary; to
36 fix their compensation; and to promote and discharge the employees
37 and agents; all without regard to the provisions of Title 11A of the
38 New Jersey Statutes;

39 j. solicit and accept gifts, grants, loans, and other aids from any
40 source or participate in any other way in any government program to
41 carry out the purposes of this act;

42 k. require a reasonable length of State residence for qualified
43 beneficiaries, as appropriate;

44 l. reasonably restrict the number of participants in the county
45 college plan and the university plan according to criteria developed by
46 the board. A person denied participation solely on the basis of this

- 1 restriction shall be granted priority for participation during the
2 succeeding year;
- 3 m. segregate contributions and payments to the fund into various
4 accounts;
- 5 n. ¹[require and collect] establish reasonable¹ administrative fees
6 in connection with any transaction and impose reasonable penalties,
7 including default, for delinquent payments or for entering into an
8 advance payment contract on a fraudulent basis;
- 9 o. procure insurance against any loss in connection with the
10 property, assets and activities of the fund or the board;
- 11 p. provide for the receipt of contributions in lump sums or
12 installment payments;
- 13 q. impose reasonable ¹[time]¹ limits on ¹[use of the tuition
14 benefits provided by the program] the length of time within which a
15 qualified beneficiary shall be required to begin to exercise benefits
16 under the program. The board shall also determine whether to impose
17 limits on the total amount of time that the qualified beneficiary is
18 permitted to exercise the benefits under the program¹ ;
- 19 r. delineate the terms under which payments may be withdrawn
20 from the fund and impose reasonable fees and charges for withdrawals;
- 21 s. define for the purposes of this act the ¹[average] maximum¹
22 number of ¹credit¹ hours ¹[required for the conferral of] which may
23 be purchased under the program for¹ an associate degree; the
24 ¹[average] maximum¹ number of ¹credit¹ hours ¹[required for the
25 conferral of] which may be purchased under the program for¹ a
26 baccalaureate degree; the average current and projected tuition within
27 the county college system and the average current and projected
28 tuition of the four-year public institutions of higher education ¹utilized
29 to limit the contractual obligations of the board to qualified
30 beneficiaries¹;
- 31 t. determine whether the New Jersey Better Educational Savings
32 Trust (NJBEST) Program established pursuant to N.J.S.18A:71B-35
33 through N.J.S.18A:71B-46 and the New Jersey Prepaid Higher
34 Education Expense Program should be marketed by a single private
35 entity and whether a single private entity should manage both
36 programs on behalf of the board;
- 37 u. adopt rules and regulations to implement this act; and
- 38 v. take all actions required so that the program is treated as a
39 qualified State tuition program under section 529 of the federal
40 Internal Revenue Code of 1986, 26 U.S.C.s.529.
- 41
- 42 8. (New section) a. The board, acting with the approval of the
43 State Investment Council in the Division of Investment, shall establish
44 a comprehensive investment plan for the purposes of this act and
45 annually review the plan to assure that the program remains actuarially
46 sound. The comprehensive investment plan shall specify the

1 investment policies to be utilized by the board in its administration of
2 the fund. The board may place assets of the fund in savings accounts
3 or use the funds to purchase fixed or variable life insurance or annuity
4 contracts, securities, evidence of indebtedness or other investment
5 products, pursuant to the comprehensive investment plan and in such
6 proportions as may be designated or approved under that plan. The
7 board shall be subject to the "prudent person" standard of care
8 applicable to the Division of Investment in the Department of the
9 Treasury pursuant to subsection b. of section 11 of P.L.1950, c.270
10 (C.52:18A-89). The insurance, annuity, savings or investment
11 products shall be underwritten and offered in compliance with the
12 applicable federal and State laws and regulations and by persons who
13 are duly authorized by applicable federal and State authorities.

14 b. The board may delegate responsibility for administration of the
15 ¹[comprehensive investment plan required pursuant to subsection a.
16 of this section] program¹ to a person the board determines to be
17 qualified. Directly or through the person, the board may contract, in
18 accordance with the provisions of P.L.1954, c.48 (C.52:34-6 et seq.),
19 with a private corporation or institution ¹authorized to do business in
20 this State¹ to provide such services as may be a part of the
21 ¹[comprehensive investment plan] program¹ or as may be deemed
22 necessary for implementation of the ¹[comprehensive investment plan]
23 program¹, including, but not limited to, providing consolidated billing,
24 individual and collective record keeping and accounting, ¹[and]¹ asset
25 purchase, control and safekeeping ¹, investment management,
26 marketing, administration, program operations, and other services
27 deemed necessary and proper to carry out the purposes of this act.

28 The board shall determine whether the services deemed necessary
29 and proper to carry out the purposes of this act shall be provided by
30 a single or multiple entities¹.

31 c. The board shall annually prepare or cause to be prepared a
32 report setting forth in appropriate detail an accounting of the fund and
33 a description of the financial condition of the program at the close of
34 each fiscal year. The report shall be submitted to the Governor, the
35 President of the Senate, the Speaker of the General Assembly, the
36 State Treasurer, the executive director of the New Jersey Commission
37 on Higher Education and the executive director of the Higher
38 Education Student Assistance Authority on or before August 1 each
39 year. In addition, the board shall make the report available to
40 purchasers of advance payment contracts. The board shall provide to
41 the Commission on Higher Education by August 1 each year complete
42 advance payment contract sales information, including projected
43 higher education enrollments of qualified beneficiaries.

44 d. The accounts of the funds shall be subject to annual audits by
45 the State Auditor or a designee. In addition, the board shall
46 commission an annual independent audit of the program. The results

1 of the independent audit shall be provided to the Governor, the
2 President of the Senate, the Speaker of the General Assembly, the
3 State Treasurer, the executive director of the New Jersey Commission
4 on Higher Education and the executive director of the Higher
5 Education Student Assistance Authority. If the board delegates
6 responsibility for the administration of the comprehensive investment
7 plan pursuant to subsection b. of this section, the cost of the
8 independent audit shall be borne by that person.

9 e. The board may make available insurance coverage written
10 exclusively for the purpose of protecting advance payment contracts,
11 and the purchasers or beneficiaries thereof, which may be issued in the
12 form of a group term life policy to purchasers of advance payment
13 contracts.

14 f. ¹[The board may solicit proposals for the marketing of the
15 program or may delegate this responsibility to the person who is
16 administering the comprehensive investment plan pursuant to
17 subsection b. of this section. The entity designated pursuant to this
18 subsection shall serve as a centralized marketing agent for the program
19 and shall be solely responsible for the marketing of the program.]¹
20 Materials produced for the purpose of marketing the program shall be
21 submitted to the board for review and approval. Marketing materials
22 shall not be made available or distributed to the public prior to the
23 materials being approved by the board. An institution of higher
24 education may distribute marketing materials produced for the
25 program. The State and the board shall not be liable for
26 misrepresentation of the program by a marketing agent.

27 ¹[A single entity may be selected to market both the New Jersey
28 Prepaid Higher Education Expense Program and the New Jersey
29 Better Educational Savings Trust (NJBEST) Program established
30 pursuant to N.J.S.18A:71B-35 through N.J.S.18A:71B-46.

31 Nothing in this subsection shall preclude the person who is
32 administering the comprehensive investment plan pursuant to
33 subsection b. of this section from marketing both the New Jersey
34 Prepaid Higher Education Expense Program and the New Jersey
35 Better Educational Savings Trust (NJBEST) Program established
36 pursuant to N.J.S.18A:71B-35 through N.J.S.18A:71B-46.]¹

37 g. Statements, reports on distributions and information returns
38 relating to accounts shall be prepared, distributed, and filed to the
39 extent required by section 529 of the federal Internal Revenue Code
40 of 1986, 26 U.S.C. s.529.

41

42 9. (New section) a. The board shall develop an advance payment
43 contract with the assistance of the Office of the Attorney General. An
44 advance payment contract shall be exempt from the provisions of
45 Subtitle 3 of Title 17 of the Revised Statutes and Subtitle 3 of Title
46 17B of the New Jersey Statutes. The contents of the contract shall

1 include, but not be limited to, the following:

2 (1) the amount of the payments and the number of payments
3 required from a purchaser;

4 (2) the terms and conditions under which purchasers are required
5 to remit payments, including, but not limited to, the date or dates upon
6 which each payment is due;

7 (3) provisions for late payment charges and for default;

8 (4) provisions for penalty fees for withdrawals from the fund;

9 (5) the name and date of birth of the qualified beneficiary on whose
10 behalf the contract is drawn and the terms and conditions under which
11 another person may be substituted as the qualified beneficiary;

12 (6) the name of any person who may cancel the contract. The
13 terms of the contract shall specify whether the contract may be
14 canceled by the purchaser, the qualified beneficiary, a specific
15 designated person or any combination of these persons;

16 (7) the terms and conditions under which a contract may be
17 canceled, the name of the person entitled to any refund due as a result
18 of the cancellation of the contract pursuant to those terms and
19 conditions, and the method for determining the amount of refund;

20 (8) the time limitations, if any, within which the qualified
21 beneficiary is required to claim benefits through the program. If time
22 limitations are included in the contract, the time expended by a
23 qualified beneficiary as an active duty member of any of the armed
24 services of the United States shall be added to the period of time
25 permitted to exercise the benefits;

26 ¹(9) the terms and conditions, if any, under which a purchaser may
27 designate another individual as a successor owner of the contract;¹ and

28 ¹[(9)] (10)¹ other terms and conditions deemed by the board to be
29 necessary or proper.

30 b. In addition to the provisions of subsection a. of this section an
31 advance payment contract shall include the following:

32 (1) the number of credit hours contracted by the purchaser;

33 (2) the plan toward which the credit hours shall be applied;

34 (3) the assumption of a contractual obligation by the board to the
35 qualified beneficiary to provide for a specified number of credit hours
36 of undergraduate instruction at a public institution of higher education,
37 not to exceed the ¹[average] maximum¹ number of credit hours
38 ¹[required for the conferral of the degree that corresponds to the plan
39 purchased on behalf of the qualified beneficiary] which may be
40 purchased under the program for the associate degree or the
41 baccalaureate degree, as appropriate¹.

42

43 10. (New section) a. At a minimum, the board shall make advance
44 payment contracts available for two independent plans to be known as
45 the county college plan and the university plan.

46 (1) Through the county college plan, the advance payment contract

1 shall provide prepaid tuition for a specified number of undergraduate
2 credit hours not to exceed the ¹[average] maximum¹ number of
3 ¹credit¹ hours ¹[required for the conferral of] which may be
4 purchased under the program for¹ an associate degree. The cost of
5 participation in the county college plan shall be based primarily on the
6 average current and projected tuition within the county college system
7 and the number of years expected to elapse between the purchase of
8 the plan on behalf of a qualified beneficiary and the exercise of the
9 benefits provided in the plan by the qualified beneficiary. Qualified
10 beneficiaries shall bear the cost of any laboratory fees associated with
11 enrollment in specific courses. ¹In the event that a qualified beneficiary
12 chooses to attend a four-year public institution of higher education,
13 the qualified beneficiary may convert the maximum number of credit
14 hours which may be purchased under the program for an associate
15 degree from a county college plan to a university plan.¹ Each
16 qualified beneficiary shall be classified as ¹[a] an in-county¹ resident
17 for tuition purposes regardless of his actual legal residence ¹during the
18 period in which benefits under the program are being utilized.¹

19 (2) Through the university plan, the advance payment contract
20 shall provide prepaid tuition for a specified number of undergraduate
21 credit hours not to exceed the ¹[average] maximum¹ number of
22 ¹credit¹ hours ¹[required for the conferral of] which may be
23 purchased under the program for¹ a baccalaureate degree. The cost
24 of participation in the university plan shall be based primarily on the
25 average current and projected tuition of the four-year public
26 institutions of higher education and the number of years expected to
27 elapse between the purchase of the plan on behalf of a qualified
28 beneficiary and the exercise of the benefits provided in the plan by the
29 beneficiary. Qualified beneficiaries shall bear the cost of any
30 laboratory fees associated with enrollment in specific courses. In the
31 event that a qualified beneficiary fails to be admitted to a four-year
32 public institution of higher education or chooses to attend a county
33 college, the qualified beneficiary may convert the ¹[average]
34 maximum¹ number of credit hours ¹[required for the conferral of]
35 which may be purchased under the plan for¹ an associate degree from
36 a university plan to a county college plan and may retain the remaining
37 credit hours in the university plan or may request a refund for prepaid
38 credit hours in excess of the ¹[average] maximum¹ number of credit
39 hours ¹[required for the conferral of] which may be purchased under
40 the program for¹ an associate degree. ¹A refund may also be
41 requested for the difference in the cost of credit hours under the
42 university plan and the county college plan for the number of credit
43 hours converted to the county college plan.¹ Each qualified
44 beneficiary shall be classified as a resident for tuition purposes
45 regardless of his actual legal residence ¹during the period in which

1 benefits under the program are being utilized¹.

2 b. In addition to the plans required pursuant to subsection a. of this
3 section, the board may make advance payment contracts available for
4 other plans, such as the county college plus university plan whereby
5 the advance payment contract would provide tuition that would allow
6 a qualified beneficiary to attend a county college for an associate
7 degree and then attend a four-year public institution of higher
8 education for a baccalaureate degree.

9 c. The board shall establish procedures for conversions between
10 plans established under the program. The procedures shall include, but
11 not be limited to, the conditions under which a conversion may occur
12 and the method for calculating any refund due.

13 d. A qualified beneficiary may apply a county college plan or a
14 university plan toward any eligible independent institution of higher
15 education. The board shall transfer or cause to have transferred to the
16 eligible independent institution of higher education designated by the
17 qualified beneficiary an amount not to exceed the weighted average
18 tuition purchased under the advance payment contract. In the event
19 that the cost of tuition at the eligible independent institution of higher
20 education is less than the weighted average tuition purchased under
21 the advance payment contract, the amount transferred shall not exceed
22 the actual cost of tuition. A transfer authorized pursuant to this
23 subsection shall not exceed the number of credit hours contracted on
24 behalf of a qualified beneficiary.

25 e. A qualified beneficiary may apply the benefits of an advance
26 payment contract toward an eligible out-of-state institution of higher
27 education. Institutional eligibility for out-of-state institutions of
28 higher education shall be determined by the board, but in making
29 those determinations the board shall recognize that the benefits may
30 only be used at an out-of-state institution of higher education whose
31 students are eligible to receive benefits under section 529 of the
32 federal Internal Revenue Code of 1986, 26 U.S.C. s.529. The board
33 shall transfer or cause to have transferred to the eligible out-of-state
34 institution of higher education designated by the qualified beneficiary
35 an amount not to exceed the weighted average tuition purchased under
36 the advance payment contract. In the event that the cost of tuition at
37 the eligible out-of-state institution of higher education is less than the
38 weighted average tuition purchased under the advance payment
39 contract, the amount transferred shall not exceed the actual cost of
40 tuition. A transfer authorized pursuant to this subsection shall not
41 exceed the number of credit hours contracted on behalf of a qualified
42 beneficiary.

43

44 11. (New section) a. The board shall determine the conditions
45 under which refunds are payable under the program. Unless
46 authorized by the board or under the provisions of this section, a

1 refund shall not exceed the amount paid into the fund by the
2 purchaser. A refund may exceed the amount paid into the fund in the
3 following circumstances:

4 (1) if the qualified beneficiary is awarded a scholarship (or
5 allowance or payment described in subparagraph (B) or (C) of
6 paragraph (1) of subsection (d) of section 135 of the federal Internal
7 Revenue Code of 1986, 26 U.S.C. s.135), the terms of which cover
8 the benefits included in the advance payment contracts, moneys paid
9 for the purchase of the advance payment contracts ¹[shall] may¹ be
10 returned to the purchaser in enrollment period installments coinciding
11 with the matriculation by the qualified beneficiary in amounts equal to
12 the lesser of the original purchase price plus 5% interest compounded
13 annually, or the weighted average tuition purchased under the advance
14 payment contract; and

15 (2) in the event of the death or disability of the qualified
16 beneficiary, moneys paid for the purchase of advance payment
17 contracts shall be returned to the purchaser together with 5% interest
18 compounded annually.

19 b. A refund shall not be authorized through an advance payment
20 contract for any school year partially attended but not completed. For
21 purposes of this subsection, a school year partially attended but not
22 completed means any one enrollment period whereby the student is
23 still enrolled at the conclusion of the official drop-add period, but
24 withdraws before the end of the enrollment period.

25 c. If a qualified beneficiary does not complete a county college plan
26 or university plan, for reasons other than specified in subsection a. of
27 this section, the purchaser shall receive a refund of the amount paid
28 into the fund for the remaining unattended years of the advance
29 payment contract pursuant to rules promulgated by the board and in
30 accordance with the provisions of section 529 of the federal Internal
31 Revenue Code of 1986, 26 U.S.C. s.529.

32
33 12. (New section) Moneys paid into or out of the fund by or on
34 behalf of a purchaser or qualified beneficiary of an advance payment
35 contract for the purposes of financing the cost of qualified higher
36 education expenses under the program are exempt from all claims of
37 creditors of the purchaser or the beneficiary.

38
39 13. (New section) The State or any State agency, county,
40 municipality, or other political subdivision may, by contract or
41 collective bargaining agreement, agree with any employee to remit
42 payments toward advance payment contracts through payroll
43 deductions made by the appropriate officer or officers of the State,
44 State agency, county, municipality, or political subdivision. The
45 payments shall be held and administered in accordance with this act.

1 14. (New section) In order to meet the obligations of the board
2 under this act, there shall be paid to the board for deposit in the fund,
3 at the time of distribution, subject to appropriation, such sum, if any,
4 as shall be certified by the chair of the board as necessary to provide
5 that amount at the time of distribution. The chair shall make and
6 deliver to the Governor, or his designee, the certificate stating the
7 sums, if any, required to make available in the fund the amount
8 aforesaid, and the sums so certified shall be appropriated and paid to
9 the board during the then current State fiscal year.

10
11 15. (New section) In the event that the State Treasurer determines
12 the program to be financially infeasible, the State may discontinue the
13 provision of the program. A qualified beneficiary who has been
14 accepted by and is enrolled or is within five years of enrollment in an
15 institution of higher education shall be entitled to exercise the benefits
16 for which he has contracted. All other contract holders shall receive
17 a refund of the amount paid into the fund ¹[, plus interest at the
18 prevailing rate]¹.

19
20 16. (New section) a. A qualified beneficiary who graduates from
21 high school with a 3.0 cumulative grade point average on a 4.0 scale
22 in an academic program or a 3.2 cumulative grade point average on a
23 4.0 scale in a vocational-educational program, based upon grades in
24 core curriculum content subject areas as determined by the board, or
25 who graduates in the top 15% of his high school graduating class shall
26 be admitted to a public institution of higher education. In order to be
27 admitted to a public institution of higher education pursuant to this
28 section, the qualified beneficiary shall meet all of the institution's
29 requirements for admittance. This provision shall not be construed to
30 promise or guarantee that a qualified beneficiary shall be admitted to
31 a particular public institution of higher education.

32 b. In order to effectuate the provisions of subsection a. of this
33 section, the board, in consultation with the Commission on Higher
34 Education, shall develop a process to assist qualified beneficiaries in
35 applying to all public institutions of higher education.

36
37 17. (New section) Moneys paid into or out of an account by or on
38 behalf of a contributor or designated beneficiary for the purposes of
39 financing the cost of qualified higher education expenses under the
40 New Jersey Better Educational Savings Trust (NJBEST) Program, are
41 exempt from all claims of creditors of the contributor or the
42 designated beneficiary.

43
44 18. N.J.S.18A:71B-36 is amended to read as follows:

45 18A:71B-36. As used in this article:

46 "Account" means an individual trust account or savings account

1 established in accordance with this article;

2 ["Authority" means the Higher Education Student Assistance
3 Authority;]

4 "Board" means the ¹NJBEST and¹ Prepaid Higher Education
5 Expense Board established pursuant to section 6 of P.L. , c.
6 (C.) (now pending before the Legislature as this bill).

7 "Contributor" means the person or organization contributing to and
8 maintaining an account and having the right to withdraw funds from
9 the account before the account is disbursed to or for the benefit of the
10 designated beneficiary;

11 "Designated beneficiary" means: a. the individual designated at the
12 time the account is opened as the individual whose higher education
13 expenses are expected to be paid from the account; b. the replacement
14 beneficiary if the change in designated beneficiary would not result in
15 a distribution that is included in federal gross income under section
16 529 of the federal Internal Revenue Code of 1986, 26 U.S.C.s.529;
17 and c. in the case of an interest in the program purchased by a state or
18 local government or an organization described in paragraph (3) of
19 subsection (c) of section 501 of the federal Internal Revenue Code of
20 1986, 26 U.S.C.s.501 and exempt from taxation under subsection (a)
21 of section 501 of the federal Internal Revenue Code of 1986, 26
22 U.S.C.s.501, as a part of a scholarship program operated by the
23 government or organization, the individual receiving the interest as a
24 scholarship;

25 "Higher education institution" means an eligible educational
26 institution as defined in or for purposes of section 529 of the federal
27 Internal Revenue Code of 1986, 26 U.S.C.s.529. Higher education
28 institution shall include a proprietary institution if expenses for tuition
29 at the institution would be considered qualified higher education
30 expenses under section 529 of the federal Internal Revenue Code of
31 1986, 26 U.S.C.s.529, but only for degree granting programs licensed
32 or approved by the Commission on Higher Education or for other
33 proprietary institutions as determined by the [authority] board;

34 "Investment Manager" means the Division of Investment in the
35 Department of the Treasury or the private entities authorized to do
36 business in this State that may be designated by the [authority] board
37 to invest the funds of the trust pursuant to the terms of this article;

38 "Member of the family" means a member of the family as defined in
39 or for purposes of section 529 of the federal Internal Revenue Code
40 of 1986, 26 U.S.C.s.529;

41 "Nonqualified withdrawal" means a withdrawal from an account
42 other than: a. a qualified withdrawal; b. a withdrawal made as the
43 result of the death or disability of the designated beneficiary of an
44 account; c. a withdrawal made on account of a scholarship (or
45 allowance or payment described in subparagraph (B) or (C) of
46 paragraph (1) of subsection (d) of section 135 of the federal Internal
47 Revenue Code of 1986, 26 U.S.C.s.135) received by the designated

1 beneficiary, but only to the extent of the amount of that scholarship,
2 allowance or payment; d. a rollover or change in designated
3 beneficiary which would not result in a distribution includible in
4 federal gross income under section 529 of the federal Internal Revenue
5 Code of 1986, 26 U.S.C.s.529; or e. any other withdrawal if the failure
6 of the program to impose a more than de minimis penalty on the
7 withdrawal would cause the program not to be a qualified State tuition
8 program under section 529 of the federal Internal Revenue Code of
9 1986, 26 U.S.C.s.529;

10 "Program" means the "New Jersey Better Educational Savings
11 Trust (NJBEST) Program" established pursuant to this article;

12 "Qualified higher education expenses" means expenses described in
13 paragraph (3) of subsection (e) of section 529 of the federal Internal
14 Revenue Code of 1986, 26 U.S.C.s.529 incurred in connection with
15 the enrollment of a designated beneficiary at a higher education
16 institution;

17 "Qualified withdrawal" means a withdrawal from an account to pay
18 the qualified higher education expenses of the designated beneficiary
19 of the account; but a withdrawal shall not be considered a qualified
20 withdrawal if the failure of the program to impose a more than de
21 minimis penalty on the withdrawal would cause the program not to
22 qualify as a qualified State tuition program under section 529 of the
23 federal Internal Revenue Code of 1986, U.S.C.s.529;

24 "Trust" means the "New Jersey Better Educational Savings Trust"
25 established pursuant to N.J.S.18A:71B-37.

26 (cf: N.J.S.18A:71B-36)

27

28 19. N.J.S.18A:71B-37 is amended to read as follows:

29 18A:71B-37. There is created within the [Higher Education
30 Student Assistance Authority] ¹NJBEST and ¹Prepaid Higher
31 Education Expense Board the New Jersey Better Educational Savings
32 Trust (NJBEST). The trust shall provide a mechanism through which
33 the [authority] board, as trustee, holds accounts established and
34 maintained pursuant to the provisions of this article to finance the cost
35 of qualified higher education expenses.

36 (cf: N.J.S.18A:71B-37)

37

38 20. N.J.S.18A:71B-38 is amended to read as follows:

39 18A:71B-38. The [Higher Education Student Assistance
40 Authority] ¹NJBEST and ¹ Prepaid Higher Education Expense Board
41 established pursuant to section 6 of P.L. , c. (C.)(now pending
42 before the Legislature as this bill) shall administer the NJBEST
43 Program. The [authority] board shall have the power to:

44 a. serve as trustee of the trust;

45 b. adopt rules and regulations pursuant to the "Administrative
46 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), necessary to

- 1 carry out the provisions of this article;
- 2 c. prescribe and provide appropriate forms for participation in the
- 3 program;
- 4 d. select an investment manager and any other contractors needed
- 5 to manage and market the program;
- 6 e. monitor the investment manager and any other contractors by
- 7 audits and other reports;
- 8 f. collect reasonable administrative fees in connection with any
- 9 contract or transaction relating to the program;
- 10 g. impose penalties for nonqualified withdrawals;
- 11 h. take all actions required so that the program is treated as a
- 12 qualified State tuition program under section 529 of the federal
- 13 Internal Revenue Code of 1986, 26 U.S.C.s.529; and
- 14 i. perform any other acts which may be deemed necessary or
- 15 appropriate to carry out the objects and purposes of this article.
- 16 (cf: N.J.S.18A:71B-38)

17

18 21. N.J.S.18A:71B-39 is amended to read as follows:

19 18A:71B-39. Neither the members of the [authority] board, nor

20 any officer or employee of the [authority] board shall be liable

21 personally for the debts, liabilities or obligations of the program

22 established pursuant to this article.

23 (cf: N.J.S.18A:71B-39)

24

25 22. N.J.S.18A:71B-40 is amended to read as follows:

26 18A:71B-40. a. The [authority] board shall select an investment

27 manager or managers to invest the funds of the trust or the funds in

28 accounts. In making this selection, any investment manager shall be

29 subject to the "prudent person" standard of care applicable to the

30 Division of Investment in the Department of the Treasury pursuant to

31 subsection b. of section 11 of P.L.1950, c.270 (C.52:18A-89), and the

32 [authority] board shall consider the impact of fees and costs imposed

33 by the manager or managers on yield to contributors.

34 b. The [authority] board may select more than one investment

35 manager and investment instrument for the program if it is in the best

36 interest of contributors and will not interfere with the administration

37 of the program.

38 c. The [authority] board may provide a contributor with a choice

39 of investment managers or investment instruments or both for the

40 program if both of the following conditions exist:

41 (1) the federal Internal Revenue Service has provided guidance that

42 providing a contributor with a choice of investment managers or

43 instruments under a State tuition program will not cause the program

44 to fail to qualify for favorable tax treatment under section 529 of the

45 federal Internal Revenue Code of 1986, 26 U.S.C.s.529; and

46 (2) the [authority] board concludes that a choice of investment

1 managers or of investment instruments is in the best interest of
2 contributors and will not interfere with the administration of the
3 program.

4 d. If the [authority] board terminates the designation of an
5 investment manager to hold accounts, and accounts must be moved
6 from that investment manager to another investment manager, the
7 [authority] board shall select the investment manager and type of
8 investment instrument to which the balance of the account is moved,
9 unless the federal Internal Revenue Service provides guidance that
10 allowing the contributor to select among several investment managers
11 or investment instruments that have been selected by the [authority]
12 board would not cause a program to cease to be a qualified State
13 tuition program for the purposes of section 529 of the federal Internal
14 Revenue Code, 26 U.S.C.s.529.

15 e. The board, upon the effective date of P.L. , c. (C.)(now
16 pending before the Legislature as this bill) and in accordance with the
17 provisions of P.L.1954, c.48 (C.52:34-6 et seq.), shall select an
18 investment manager or managers for the program. If the selection
19 process provided for in this subsection results in an investment
20 manager other than the Division of Investment, the board shall provide
21 for the orderly transfer of accounts and shall ensure that all the rights
22 of the contributors and designated beneficiaries participating in the
23 program as of the effective date of P.L. , c. (C.)(now pending
24 before the Legislature as this bill), are protected.

25 (cf: N.J.S.18A:71B-40)

26

27 23. N.J.S.18A:71B-41 is amended to read as follows:

28 18A:71B-41. a. The program shall be operated as a trust through
29 the use of accounts for designated beneficiaries. An account may be
30 opened by any person who desires to save to pay the qualified higher
31 education expenses of an individual by satisfying each of the following
32 requirements:

33 (1) completing an application in the form prescribed by the
34 [authority] board;

35 (2) paying the one-time application fee established by the
36 [authority] board;

37 (3) making the minimum contribution required by the [authority]
38 board for opening an account;

39 (4) designating the account or accounts to be opened; and

40 (5) in the case of an account to which subsection a. of
41 N.J.S.A.18A:71B-44 would apply, demonstrating to the satisfaction
42 of the [authority] board that either the contributor, if an individual, or
43 the designated beneficiary is a New Jersey resident. The requirement
44 of New Jersey residency for either the contributor or the designated
45 beneficiary would not apply to an account to which subsection b. of
46 N.J.S.18A:71B-44 would apply unless otherwise determined by the

- 1 [authority] board.
- 2 b. Except as provided under N.J.S.18A:71B-42, only the
3 contributor may make contributions to an account after the account is
4 opened.
- 5 c. Contributions to accounts shall be made only in cash, as defined
6 by the [authority] board pursuant to regulations, in accordance with
7 section 529 of the federal Internal Revenue Code of 1986, 26
8 U.S.C.s.529.
- 9 d. Contributors may withdraw all or part of the balance from an
10 account on sixty days' notice or a shorter period, as may be authorized
11 by the [authority] board pursuant to regulations.
- 12 e. A contributor may change the designated beneficiary of an
13 account or rollover all or a portion of an account to another account
14 if the change or rollover would not result in a distribution includible
15 in gross income under section 529 of the federal Internal Revenue
16 Code of 1986, 26 U.S.C.s.529, in accordance with procedures
17 established by the [authority] board.
- 18 f. In the case of any nonqualified withdrawal, a penalty at a level
19 established by the [authority] board and sufficient to be considered a
20 more than de minimis penalty for purposes of section 529 of the
21 federal Internal Revenue Code of 1986, 26 U.S.C.s.529, shall be
22 withheld and paid to the [authority] board for use in operating and
23 marketing the program. The [authority] board may elect not to
24 impose a penalty if that section ceases to include a provision requiring
25 more than de minimis penalties for a program to qualify as a qualified
26 State tuition program.
- 27 g. If a contributor makes a nonqualified withdrawal and a penalty
28 amount is not withheld pursuant to subsection f. of this section or the
29 amount withheld is less than the amount required to be withheld under
30 that subsection, the contributor shall pay the unpaid portion of the
31 penalty to the [authority] board at the same time that the contributor
32 files a State income tax return for the taxable year of the withdrawal,
33 or if the contributor does not file a return, the unpaid portion of the
34 penalty shall be paid on or before the due date for the filing of that
35 income tax return.
- 36 h. Each account shall be maintained separately from each other
37 account under the program.
- 38 i. Separate records and accounting shall be maintained for each
39 account for each designated beneficiary.
- 40 j. A contributor to or designated beneficiary of any account shall
41 not direct the investment of any contributions to an account or the
42 earnings from the account, except as permitted under section 529 of
43 the federal Internal Revenue Code of 1986, 26 U.S.C.s.529.
- 44 k. A contributor or a designated beneficiary shall not use an
45 interest in an account as security for a loan. Any pledge of an interest
46 in an account is of no force and effect.

1 l. The maximum contribution for any designated beneficiary shall
2 be determined by the [authority] board pursuant to regulations, in
3 accordance with section 529 of the federal Internal Revenue Code of
4 1986, 26 U.S.C.s.529.

5 m. Statements, reports on distributions and information returns
6 relating to accounts shall be prepared, distributed, and filed to the
7 extent required by section 529 of the federal Internal Revenue Code
8 of 1986, 26 U.S.C.s.529, or regulations issued thereunder.

9 n. The [authority] board may charge, impose and collect
10 reasonable administrative fees and service charges in connection with
11 any agreement, contract or transaction relating to the program. These
12 fees and charges may be imposed directly on contributors or may be
13 taken as a percentage of the investment earnings on accounts.

14 o. The State or any State agency, municipality, or other political
15 subdivision may, by contract or collective bargaining agreement, agree
16 with any employee to remit contributions to accounts through payroll
17 deductions made by the appropriate officer or officers of the State,
18 State agency, county, municipality, or political subdivision. The
19 contributions shall be held and administered in accordance with this
20 act.

21 (cf: N.J.S.18A:71B-41)

22
23 24. N.J.S.18A:71B-42 is amended to read as follows:

24 18A:71B-42. a. An amount of no less than \$500 shall be provided
25 by the State for the qualified higher education expenses of a
26 designated beneficiary at the time of a qualified withdrawal provided
27 that:

28 (1) the contributor demonstrates, to the satisfaction of the
29 [authority] board, that the contributor participated in the program for
30 at least four years by making a qualifying minimum initial deposit or
31 qualifying minimum annual contributions, or both, as shall be
32 determined by the [authority] board, for a designated beneficiary;

33 (2) the designated beneficiary demonstrates, to the satisfaction of
34 the [authority] board, attendance or enrollment in a higher education
35 institution in this State, at the time of initial attendance or enrollment
36 in the higher education institution; and

37 (3) either the contributor, if an individual, or the designated
38 beneficiary demonstrates, to the satisfaction of the [authority] board,
39 that the contributor or designated beneficiary is a New Jersey resident.

40 b. The amount provided under subsection a. of this section shall
41 meet the requirements of a qualified scholarship within the meaning of
42 section 117 of the federal Internal Revenue Code of 1986, 26
43 U.S.C.s.117, for a designated beneficiary satisfying the requirements
44 of subsection a. of this section.

45 c. A designated beneficiary shall not receive more than one State

1 scholarship provided pursuant to subsection a. of this section.
2 (cf: N.J.S.18A:71B-42)

3

4 25. N.J.S.18A:71B-43 is amended to read as follows:

5 18A:71B-43. Annually, the [authority] board shall determine a
6 dollar amount of an account, which shall not be less than \$25,000,
7 which shall not be considered in evaluating the financial needs of a
8 student enrolled in an institution of higher education located in the
9 State of New Jersey, or be deemed a financial resource or a form of
10 financial aid or assistance to a student, for purposes of determining the
11 eligibility of a student for any scholarship, grant, or monetary
12 assistance awarded by the State; nor shall the amount of any account
13 as determined by the [authority] board provided for a designated
14 beneficiary under this article reduce the amount of any scholarship
15 grant or monetary assistance which the student is entitled to be
16 awarded by the State.

17 (cf: N.J.S.18A:71B-43)

18

19 26. N.J.S.18A:71B-44 is amended to read as follows:

20 18A:71B-44. a. If the investment manager is the Division of
21 Investment in the Department of the Treasury, in order to assure the
22 availability of principal of any amount contributed under this article,
23 there shall be paid to the [authority] board for deposit in the trust, at
24 the time of distribution, subject to appropriation, such sum, if any, as
25 shall be certified by the [chairperson] chair of the [authority] board
26 as necessary to provide that amount at the time of distribution. The
27 [chairperson] chair shall make and deliver to the Governor, or his
28 designee, the certificate stating the sums, if any, required to make
29 available in the trust the amount aforesaid, and the sums so certified
30 shall be appropriated and paid to the [authority] board during the then
31 current State fiscal year.

32 b. If the investment manager is a private entity, the investment of
33 the principal and interest of any amount contributed under this article
34 shall be ¹[backed by the full faith and credit of the United States or be
35 fully insured by the Federal Deposit Insurance Corporation or other
36 similar insurer backed by the full faith and credit of the United States.
37 No account balance shall exceed the maximum amount of insurance
38 provided by the insurer. No investment is permitted in derivatives of
39 eligible securities, and any investment must be designed to balance
40 prospective payments according to the guidelines established] made
41 in accordance with an investment plan approved by the State
42 Investment Council in the Division of Investment¹.

43 (cf: N.J.S.18A:71B-44)

44

45 27. N.J.S.18A:71B-45 is amended to read as follows:

46 18A:71B-45. a. Nothing in this article shall be construed to:

1 (1) guarantee that a designated beneficiary will be admitted to a
2 higher education institution or be allowed to continue enrollment at or
3 graduate from a higher education institution after admission;

4 (2) establish State residency for a person merely because the
5 person is a designated beneficiary; or

6 (3) guarantee that amounts saved pursuant to the program will be
7 sufficient to cover the qualified higher education expenses of a
8 designated beneficiary.

9 b. Nothing in this article establishes any obligation of this State or
10 any agency or instrumentality of this State to guarantee for the benefit
11 of any contributor or designated beneficiary any of the following:

12 (1) the rate of interest or other return on any account; or

13 (2) the payment of interest or other return on any account.

14 c. Nothing in this article establishes any obligation or liability of
15 this State or any agency or instrumentality of this State with respect
16 to any federal or State tax liability of any contributor or designated
17 beneficiary in this program.

18 d. Under regulations promulgated by the [authority] board, every
19 contract and application that may be used in connection with a
20 contribution to an account shall clearly indicate that the account is not
21 insured by this State nor is the investment return guaranteed by this
22 State.

23 (cf: N.J.S.18A:71B-45)

24

25 28. N.J.S.18A:71B-46 is amended to read as follows:

26 18A:71B-46. If the Congress of the United States enacts legislation
27 that exempts educational savings accounts from federal income
28 taxation, sections N.J.S.18A:71B-42 and N.J.S.18A:71B-43 shall
29 apply with respect to such educational savings accounts as if they were
30 accounts established under this act and the beneficiaries of the
31 accounts were designated beneficiaries subject to the approval of the
32 [New Jersey Higher Education Assistance Authority] board.

33 (cf: N.J.S.18A:71B-46)

34

35 29. (New section) Regulations adopted by the New Jersey Higher
36 Education Student Assistance Authority pertaining to the New Jersey
37 Better Educational Savings Trust (NJBEST) Program shall continue
38 with full force and effect under the board for a period of one year from
39 the effective date of this act or until amended, continued or repealed
40 by the board pursuant to law.

41

42 30. Section 13 of P.L..1997, c.237 (C.54A:6-25) is amended to
43 read as follows:

44 13. a. Gross income shall not include earnings on an education
45 individual retirement account or a qualified State tuition program
46 account until the earnings are distributed from the account, at which

1 time they shall be includible in the gross income of the distributee
2 except as provided in this section.

3 b. Gross income shall not include qualified distributions as defined
4 in paragraph (3) of subsection c. of this section.

5 c. For purposes of this section:

6 (1) "Education individual retirement account" means an education
7 retirement account as defined pursuant to paragraph (1) of subsection
8 (b) of section 530 of the federal Internal Revenue Code of 1986, 26
9 U.S.C. s.530.

10 (2) "Qualified State tuition program account" means an account
11 established pursuant to the "New Jersey Better Educational Savings
12 Trust (NJBEST) Program," (N.J.S.18A:71B-35 et seq.) an account
13 established pursuant to the "New Jersey Prepaid Higher Education
14 Expense Program,"(P.L. , c. (C.))(now pending before the
15 Legislature as this bill) or an account established pursuant to any
16 qualified State tuition program, as defined pursuant to subsection (b)
17 of section 529 of the federal Internal Revenue Code of 1986,
18 26 U.S.C. s.529 or a tuition credit or certificate purchased pursuant to
19 any such program.

20 (3) "Qualified distribution" means any of the following:

21 (a) a distribution from a qualified State tuition program account
22 that is used for qualified higher education expenses as defined pursuant
23 to paragraph (3) of subsection (e) of section 529 of the federal Internal
24 Revenue Code of 1986, 26 U.S.C. s.529;

25 (b) a rollover from one account to another account as described in
26 clause (i) of subparagraph (C) of paragraph (3) of subsection (c) of
27 section 529 or paragraph (5) of subsection (d) of section 530 of the
28 federal Internal Revenue Code of 1986, 26 U.S.C. s.529 or 530;

29 (c) a change in designated beneficiaries of an account as described
30 in clause (ii) of subparagraph (C) of paragraph (3) of subsection (c) of
31 section 529 or paragraph (6) of subsection (d) of section 530 of the
32 federal Internal Revenue Code of 1986, 26 U.S.C. s.529 or 530;

33 d. The portion of a distribution from an education individual
34 retirement account or a qualified State tuition program account that is
35 attributable to earnings shall be determined in accordance with the
36 principles of section 72 of the federal Internal Revenue Code of 1986,
37 26 U.S.C. s.72, as applied for purposes of sections 529 and 530 of the
38 federal Internal Revenue Code of 1986, 26 U.S.C. ss.529 and 530.

39 (cf: P.L.1999, c.116, s.1)

40

41 31. There is appropriated from the General Fund to the ¹NJBEST
42 and¹ Prepaid Higher Education Expense Board in, but not of, the
43 Department of State \$250,000 to effectuate the provisions of this act.

44

45 32. This act shall take effect immediately.

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

SENATE, No. 2054

STATE OF NEW JERSEY

209th LEGISLATURE

DATED: JUNE 7, 2001

SUMMARY

Synopsis: Establishes New Jersey Prepaid Higher Education Expense Program.
Type of Impact: General Fund expenditure increase.
Agencies Affected: Department of State; Higher Education Student Assistance Authority.

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Cost	Indeterminate-See Comments Below		

- ! Senate Bill No. 2054 (1R) of 2001 establishes the New Jersey Prepaid Higher Education Expense Program to provide a mechanism through which the cost of college tuition may be paid in advance of enrollment in an institution of higher education at a rate lower than the cost at the time of actual enrollment. The program will be administered by a Prepaid Higher Education Expense Board also established under the bill. This bill also shifts the responsibility for the administration of the New Jersey Better Educational Savings Trust (NJBEST) Program from the Higher Education Student Assistance Authority to the Prepaid Higher Education Expense Board.
- ! It is not possible to ascertain the potential cost of this program due to various factors. However, according to information received from the Higher Education Student Assistance Authority, start-up costs for the program could be at least \$500,000. This estimate includes the salary of an executive director, one professional staff person, one secretarial staff person, rental expenses and initial program marketing costs. This bill includes an appropriation of \$250,000 to finance the program's start-up costs.
- ! Since the enactment of the "Higher Education Restructuring Act of 1994," P.L. 1994, c.48, tuition and fees are established solely by the boards of trustees at the institutions of higher education. Under the bill, the State will assume a financial liability if the actual cost of higher education at the time of enrollment exceeds the earnings on the contributions of participants. The bill stipulates that in the event the State Treasurer determines the program to be financially infeasible, the State may discontinue the program. However, the State does retain a limited financial liability by assuring that a qualified beneficiary who has been accepted by, or is enrolled, or is within five years of enrollment, in an institution of higher education

would be entitled to exercise the contracted benefits. All other contract holders would receive a refund of the amount paid into the fund plus interest.

BILL DESCRIPTION

Senate Bill No. 2054(1R) of 2001 establishes the New Jersey Prepaid Higher Education Expense Program to provide a mechanism through which the cost of tuition may be paid in advance of enrollment in an institution of higher education at a rate lower than the cost at the time of actual enrollment. The bill provides for the creation of an eleven member Prepaid Higher Education Expense Board in, but not of, the Department of State to administer the program. The board is authorized to appoint an executive director to serve as the chief administrative and operational officer of the board; to make and enter into all contracts and agreements necessary for the performance of its duties; and employ personnel, including financial and computer experts, legal counsel, accountants, managers and auditors as may be necessary. The board is also authorized to establish a comprehensive investment plan for the program and may enter into a contract with a designated entity to oversee the administration of the plan. The investment plan will specify the investment policies to be utilized by the board in its administration of the prepaid Higher Education Expense Trust Fund.

Under the program, a purchaser may enter into an advance payment contract to purchase a specific number of credit hours on behalf of a beneficiary. Funds remitted in accordance with advance payment contracts will be deposited into the Prepaid Higher Education Expense Trust Fund and invested in a manner that yields, at a minimum, sufficient interest to generate the difference between the prepaid amount and the average cost of tuition at a public institution of higher education when the benefits are exercised. The board would be required to make available, at a minimum, advance payment contracts for two independent plans-the county college plan and the university plan.

The bill guarantees that in the event that the moneys in the trust fund are insufficient to offset the obligations of the board, then the State will meet those obligations. As a measure of protection for the State, the State Treasurer may discontinue the program if it is determined that the program is financially infeasible. Under these conditions, a qualified beneficiary who has been accepted by, or is enrolled, or is within five years of enrollment, in an institution of higher education will be entitled to exercise the benefits for which he has contracted. All other contract holders will receive a refund of the amount paid into the fund, plus interest at the prevailing rate.

The bill amends the State tax code to specifically include the New Jersey Prepaid Higher Education Expense Program as a qualified State tuition program under which the earnings are not included in gross income until they are distributed from the account. This provision mirrors the tax treatment given to contributions made under the NJBEST Program.

The bill also amends the law establishing the New Jersey Better Educational Savings Trust (NJBEST) Program. The responsibility for the program's administration would be shifted from the Higher Education Student Assistance Authority to the Prepaid Higher Education Expense Board. The bill provides that the board must, after the bill's effective date, select an investment manager for NJBEST pursuant to the provisions of the State public contracting law. Currently, the Division of Investment serves as the investment manager for NJBEST. In the event that the investment manager changes due to this provision, the board must provide for the orderly transfer of accounts and must ensure that all the rights of the contributors and designated beneficiaries are protected.

FISCAL ANALYSIS***EXECUTIVE BRANCH***

None received.

OFFICE OF LEGISLATIVE SERVICES

The Office of Legislative Services (OLS) cannot estimate the additional cost that the State would incur for the establishment of the New Jersey Prepaid Higher Education Expense Program. The following, however, are the elements which will impact State costs for the program:

START-UP COSTS - The Higher Education Student Assistance Authority estimates that the initial start-up costs for the Prepaid Higher Education Expense Program will be a minimum of \$500,000. This estimate includes the salary of an executive director, one professional staff person, one secretarial staff person, rental expenses and initial program marketing costs. The bill includes an appropriation of \$250,000 to finance the program's start-up costs.

OPERATIONAL COSTS - The bill charges the Prepaid Higher Education Expense Board with the operation of both the Prepaid Higher Education Expense Program and NJBEST. While in FY2001 the Higher Education Assistance Authority receives a \$750,000 appropriation to administer NJBEST, it is difficult to determine the amount of operational funds which will be required to administer both programs. While NJBEST is being administered by an existing State agency, the creation of a new State entity will initially entail some additional costs. The program may require staff in addition to those positions funded through the start-up appropriation.

The board is charged with the development of an investment plan for the program and is authorized to delegate responsibility for the administration of that plan. The board is authorized to contract with a private corporation or institution to provide the services necessary to implement the plan including consolidated billing, record keeping and accounting, and asset purchase, control and safekeeping. The overall operational costs of the program will obviously be dependent on the contract prices negotiated by the board for the above and other necessary services. Presumably some of these costs will be offset by the administrative fees which the board is authorized to collect from purchasers.

The board is also directed under the bill to solicit bids for an investment manager for the NJBEST Program. Currently, the Division of Investment in the Department of Treasury acts as the NJBEST investment manager. If the bidding process results in an entity other than the division being selected as the investment manager, this could represent an additional cost to the program, although again these costs could be offset by administrative fees charged to purchasers.

POTENTIAL STATE LIABILITY - Under the bill, moneys remitted by purchasers for advance payment contracts will be combined and deposited into the Prepaid Higher Education Expense Trust Fund and invested in a manner that yields, at a minimum, the difference between the prepaid amount and the average in-state tuition cost at the public institutions of higher education. Since the enactment of the "Higher Education Restructuring Act of 1994," P.L.1994, c.48, tuition and fees are set by each individual institution's board of trustees and the State has no authority to limit increases. Should future increases in tuition be greater than the earnings on the investment of trust funds, the State will face a future liability in meeting the guaranteed

higher education expenses of program beneficiaries. This liability is limited by the fact that the State Treasurer may discontinue the program if he determines it to be financially infeasible. In that case the State would only be required to meet the expenses of a beneficiary who has been accepted by, or is enrolled, or is within five years of enrollment, in an institution of higher education. All other contract holders would receive a refund of the amount paid into the fund, plus interest at the prevailing rate.

Section: *Education*

Analyst: *Cindy Grant*
Assistant Fiscal Analyst

Approved: *Alan R. Kooney*
Legislative Budget and Finance Officer

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 2054

STATE OF NEW JERSEY

DATED: JUNE 14, 2001

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 2054 (1R).

This bill establishes the New Jersey Prepaid Higher Education Expense Program to provide a mechanism through which the cost of tuition may be paid in advance of enrollment in an institution of higher education at a rate lower than the cost at the time of actual enrollment.

The bill creates the NJBEST and Prepaid Higher Education Expense Board in, but not of, the Department of State, which would consist of the State Treasurer, the executive director of the Commission on Higher Education, the executive director of the Higher Education Student Assistance Authority, the chair of the New Jersey Presidents' Council, or their designees, and seven members appointed by the Governor, who will possess knowledge, skill and experience in the areas of accounting, actuary, risk management or investment management. The board would be responsible for administering the New Jersey Prepaid Higher Education Expense Program.

The bill directs the board, with the assistance of the Office of the Attorney General, to develop an advance payment contract. The following provisions must be included in the contract:

- the amount of the payment and the number of payments required;
- the terms and conditions under which a purchaser will remit payments, including, but not limited to, the dates upon which each payment will be due;
- provisions for late payment charges and for default;
- provisions for penalty fees for withdrawals from the fund;
- the name and date of birth of the qualified beneficiary on whose behalf the contract is drawn and the terms and conditions under which another person may be substituted as the qualified beneficiary;
- the name of any person who may cancel the contract;
- the terms and conditions under which a contract may be canceled, the name of the person entitled to any refund due as a result of the cancellation, and the amount of refund, if any, due to the person named;
- the time limitations, if any, within which the qualified beneficiary must claim benefits through the program;

- the terms and conditions, if any, under which a purchaser may designate another individual as a successor owner of the contract; and
- other terms and conditions deemed by the board to be necessary or proper.

In addition to these general provisions, the bill also requires that the advance payment contract include specific provisions, including the number of credit hours contracted by the purchaser and whether the credit hours will be applied toward a four-year public institution of higher education or a county college. The advance payment contract will also include a provision obligating the board to provide to the qualified beneficiary the specified number of credit hours of undergraduate instruction at a public institution of higher education, not to exceed the maximum number of credit hours which may be purchased under the program for the associate degree or the baccalaureate degree, as appropriate.

The bill requires the board to make advance payment contracts available for two independent plans, at a minimum, to be known as the county college plan and the university plan. Through a county college plan, the advance payment contract will provide prepaid tuition for a specified number of undergraduate credit hours not to exceed the maximum number of hours which may be purchased under the program for an associate degree. Through a university plan, the advance payment contract will provide prepaid tuition for a specified number of undergraduate credit hours not to exceed the maximum number of hours which may be purchased under the program for a baccalaureate degree. The cost of participating in each of these plans will be based primarily on the average current and projected tuition within the county college system or the four-year public institutions of higher education system, respectively, and the number of years expected to elapse between the purchase of the plan and the exercise of the benefits by the qualified beneficiary.

The bill permits a county college plan or a university plan to be applied toward any independent institution of higher education. Under these circumstances, the board will transfer to these institutions an amount not to exceed the weighted average tuition purchased under the advance payment contract. If the costs at the independent institution of higher education are less than the weighted average tuition purchased under the advance payment contract, then the amount transferred may not exceed the actual cost of tuition.

The bill also permits the benefits of an advance payment contract to be applied toward an eligible out-of-state institution of higher education. Under these circumstances, the board will transfer to these institutions an amount not to exceed the weighted average tuition purchased under the advance payment contract. If the costs at the out-of-state institution are less than the weighted average tuition purchased under the advance payment contract, then the amount transferred may not exceed the actual cost of tuition.

The bill guarantees that if the moneys in the fund are insufficient

to offset the obligations of the board, then the State will meet those obligations. As a measure of protection for the State, the State Treasurer may discontinue the program if it is determined that the program is financially infeasible. Under these conditions, a qualified beneficiary who has been accepted by and is enrolled, or is within five years of enrollment, in an institution of higher education will be entitled to exercise the benefits for which the beneficiary has contracted. All other contract holders will receive a refund of the amount paid into the fund.

The bill provides that a qualified beneficiary who graduates from high school with a 3.0 cumulative grade point average on a 4.0 scale in an academic program or a 3.2 cumulative grade point average on a 4.0 scale in a vocational education program, based upon grades in core curriculum content subject areas, or who graduates in the top 15% of his high school graduating class will be admitted to a public institution of higher education. The qualified beneficiary must, however, meet all of the institution's requirements for admittance.

The bill also amends the law establishing the New Jersey Better Educational Savings Trust (NJBEST) Program. The responsibility for the program's administration is shifted from the Higher Education Student Assistance Authority to the NJBEST and Prepaid Higher Education Expense Board, which is also to administer the New Jersey Prepaid Higher Education Expense Program. The bill also provides that the board must, after the effective date of the act, select an investment manager for the program pursuant to the provisions of the State public contracting law. In the event that the investment manager changes due to this provision, the board must provide for the orderly transfer of accounts and must ensure that all the rights of the contributors and designated beneficiaries are protected.

The bill also amends the State gross income tax code to specifically include the New Jersey Prepaid Higher Education Expense Program as a qualified State tuition program under which the earnings are not included in gross income until they are distributed from the account.

The provisions of this bill are identical to those of Assembly Committee Substitute for Assembly Bill Nos. 1622 and 2296 (2R), which the committee also reports this day.

FISCAL IMPACT

The Office of Legislative Services (OLS) cannot estimate the additional cost that the State would incur for the establishment of the New Jersey Prepaid Higher Education Expense Program. The following, however, are the elements that will impact State costs for the program:

Start-up costs. The Higher Education Student Assistance Authority estimates that the initial start-up costs for the program will be a minimum of \$500,000. This estimate includes the salary of an executive director, one professional staff person, one secretarial staff

person, rental expenses and initial program marketing costs. The bill includes an appropriation of \$250,000 to finance the program's start-up costs.

Operating costs. The bill charges the Prepaid Higher Education Expense Board with the operation of both the Prepaid Higher Education Expense Program and NJBEST. In FY2001, the Authority received a \$750,000 appropriation to administer NJBEST; it is difficult, however, to forecast the amount of operating funds that will be required to administer both programs. Whereas NJBEST is being administered by an existing State agency, the creation of a new State entity will initially entail some additional costs. The program may require staff in addition to those positions funded through the start-up appropriation.

The board is charged with the development of an investment plan for the program and is authorized to delegate responsibility for the administration of that plan. The board is authorized to contract with a private corporation or institution to provide the services necessary to implement the plan including consolidated billing, record keeping and accounting, and asset purchase, control and safekeeping. The overall operational costs of the program will obviously be dependent on the contract prices negotiated by the board for the above and other necessary services. Presumably some of these costs will be offset by the administrative fees which the board is authorized to collect from purchasers.

The board is also directed under the bill to solicit bids for an investment manager for the NJBEST Program. Currently, the Division of Investment in the Department of the Treasury acts as the NJBEST investment manager. The selection of a different manager could result in management expenses higher than those charged by the Division, although any such higher costs could be offset by a compensating increase in return or by administrative fees charged to purchasers.

Potential State liability. Under the bill, moneys remitted by purchasers for advance payment contracts will be combined and deposited into the Prepaid Higher Education Expense Trust Fund and invested in a manner that yields, at a minimum, the difference between the prepaid amount and the average in-state tuition cost at the public institutions of higher education. Since the enactment of the "Higher Education Restructuring Act of 1994," P.L.1994, c.48, tuition and fees are set by each individual institution's board of trustees and the State has no authority to limit increases. Should future increases in tuition be greater than the earnings on the investment of trust funds, the State will face a future liability in meeting the guaranteed higher education expenses of program beneficiaries. This liability is limited by the fact that the State Treasurer may discontinue the program if he determines it to be financially infeasible. In that case the State would only be required to meet the expenses of a beneficiary who has been accepted by, or is enrolled or within five years of enrollment in, an institution of higher education. All other contract holders would receive a refund

of the amount paid into the fund, plus interest at the prevailing rate.

Potential measures of cost control. The bill would empower the Prepaid Higher Education Expense Board to limit the length of time within which qualified beneficiaries would have to begin exercising program benefits. The board also would have the authority to limit the total amount of time over which a beneficiary could exercise those program benefits.

**ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY BILL NOS. 1622 and 2296 (Second Reprint)**

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Assembly Committee Substitute for Assembly Bill Nos. 1622 and 2296 (Second Reprint) with my recommendations for reconsideration.

A.SUMMARY OF BILL

This bill would establish the New Jersey Prepaid Higher Education Expense Program to provide a mechanism through which the cost of tuition may be paid in advance of enrollment at a public institution of higher education at a rate lower than the cost at the time of actual enrollment. Monies paid in accordance with advance payment contracts would be combined and invested in a manner intended to yield sufficient interest to generate the difference between the prepaid amount and the average in-state tuition costs at a public institution in New Jersey. The program would then pay to the public institution the actual tuition rate at the time the benefits are exercised.

The bill also makes significant changes to the existing New Jersey Better Educational Savings Trust (NJBEST) program. First, it transfers the management of the NJBEST program to a newly created NJBEST and Prepaid Higher Education Expense Board that will select an investment manager or managers for both programs. If the board selects an investment manager other than the Division of Investments in the Department of Treasury, then the State will no longer guarantee the contributions made pursuant to NJBEST contracts entered into after the effective date of the act. In contrast, the State will guarantee the advance payment contracts made pursuant to the prepaid tuition program regardless of whether the investment manager is the Division of Investments or a private entity.

B. RECOMMENDED ACTION

I commend the sponsors of this bill, and the Legislature as a whole, for their efforts to develop an additional mechanism to assist people in saving for higher education expenses. However, I am concerned that this bill may obligate the State to guarantee a substantial future financial liability without allowing the State sufficient control over the investments so as to protect the State's interests. As written, this bill requires the State to guarantee the obligations of the prepaid program even if the investment funds are managed by a private entity. I am also concerned that this provision will inadvertently detract from the State's existing NJBEST program by providing a more favorable State backing to the prepaid program should the board select a private entity as the investment manager for both programs. The State's

guarantee of the principal contributions to NJBEST is one provision that has made the program attractive to an increasing number of participants. At present, there are over 9,000 NJBEST accounts and the number of new accounts is far outpacing closed accounts.

As an original sponsor of the NJBEST program, it is my belief that any new educational savings program should complement our existing NJBEST program and not detract from it in any way. Additionally, both programs must be fiscally sound and not expose the State and its taxpayers to a substantial and unforeseen financial liability. Lastly, I believe that it is preferable to have a separate Prepaid Higher Education Expense Board develop and administer the prepaid program without also assuming responsibility for the existing NJBEST program that is working well under the Higher Education Student Assistance Authority.

For these reasons, I am returning Assembly Committee Substitute for Assembly Bill Nos. 1622 and 2296 (Second Reprint) and recommend that it be amended as follows:

<u>Page 2, Section 1, Line 8:</u>	Delete "16" and insert "17"
<u>Page 2, Section 1, Line 10:</u>	Delete "2000" and insert "2001."
<u>Page 2, Section 3, Line 29:</u>	Delete "16" and insert "17"
<u>Page 2, Section 3, Line 32:</u>	Delete "NJBEST and"
<u>Page 3, Section 3, Line 45:</u>	Delete "NJBEST and"
<u>Page 4, Section 4, Line 16:</u>	Delete "NJBEST and"
<u>Page 4, Section 5, Line 20:</u>	Delete "NJBEST and"
<u>Page 5, Section 6, Line 14:</u>	Delete "NJBEST and"
<u>Page 7, Section 7, Lines 32 through 37:</u>	Delete entire subsection "t."
<u>Page 7, Section 7, Line 38:</u>	Delete "u." and insert "t."
<u>Page 7, Section 7, Line 39:</u>	Delete "v." and insert "u."
<u>Page 8, Section 8, Line 28:</u>	Insert new sentence after "act." "In the event that the board delegates a private entity as the investment manager, the assets of the fund shall be invested in accordance with an investment plan approved by the State Investment Council in the Division of Investment."
<u>Page 14, Section 14, Line 3:</u>	Delete "In". Insert "If the investment manager is the Division of Investment in the Department of the Treasury, in" ...
<u>Page 14, Section 17, Line 39 through Page 17, Section 21, Line 26:</u>	Delete sections 17 through 21 and replace with new section 17 to read as follows: "17. (New section) a. Nothing in this article shall be construed to guarantee that a qualified beneficiary will be

admitted to a particular higher education institution or be allowed to continue enrollment at or graduate from a higher education institution after admission.

b. Nothing in this article shall establish any obligation or liability on the part of this State or any agency or instrumentality of this State with respect to any federal or State tax liability of any contributor or designated beneficiary in this program.

c. Under regulations promulgated by the board, every contract and application that may be used in connection with the program shall clearly indicate that the contract is not insured by this State, other than as set forth in sections 14 and 15 of P.L. , c. (C.) (now pending before the Legislature as this bill).

- Page 17, Section 22, Line 28: Delete “22.” Insert “18.”
- Page 17, Line 29: Delete “[authority] board” Insert “authority”
- Page 17, Line 35: Delete “[authority] board” Insert “authority”
- Page 17, Line 37: Delete “[authority] board” Insert “authority”
- Page 17, Line 41: Delete “[authority] board” Insert “authority”
- Page 18, Line 3: Delete “[authority] board” Insert “authority”
- Page 18, Line 7: Delete “[authority] board” Insert “authority”
- Page 18, Line 10: Delete “[authority] board” Insert “authority”
- Page 18, Line 15: Delete “[authority] board” Insert “authority”
- Page 18, Line 18: Delete first sentence in subsection so that subsection begins with “e. If the selection process provided ...”
- Page 18, Line 22: Delete “subsection” and insert “section”
- Page 18, Line 23: Delete “board” and insert “authority”
- Page 18, Section 23, Line 30 through
Page 21, Section 25, Line 18: Delete sections 23 through 25 in entirety.
- Page 21, Section 26, Line 20: Delete “26.” Insert “19.”
- Page 21, Line 24: Delete “[authority] board” Insert “authority”
- Page 21, Line 26: Delete “[authority] board” Insert “authority”
- Page 21, Line 31: Delete “[authority] board” Insert “authority”

Page 21, Section 27, Line 46 through

Page 22, Section 29, Line 40:

Delete sections 27 through 29 in entirety.

Page 22, Line 41:

Insert new section 20 to read as follows:

“20.(New section) Moneys paid into or out of a NJBEST account by or on behalf of a contributor or designated beneficiary for the purposes of financing the cost of qualified higher education expenses under this article are exempt from all claims of creditors of the contributor or the designated beneficiary.”

Page 22, Section 30, Line 42:

Delete “30.” and insert “21.”

Page 23, Section 31, Lines 40-41:

Delete “31.” and insert “22.”
Delete “NJBEST and”

Page 23, Section 32, Line 44:

Delete “32.” and insert “23.”

Respectfully,

/s/ Donald T. DiFrancesco

Acting Governor

[seal]

Attest:

/s/ James A. Harkness

Chief Counsel to the Governor

[Third Reprint]

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 1622 and 2296

STATE OF NEW JERSEY
209th LEGISLATURE

ADOPTED DECEMBER 7, 2000

Sponsored by:

Assemblyman KEVIN J. O'TOOLE

District 21 (Essex and Union)

Assemblyman FRANCIS J. BLEE

District 2 (Atlantic)

Assemblyman DAVID W. WOLFE

District 10 (Monmouth and Ocean)

Assemblyman ANTHONY IMPREVEDUTO

District 32 (Bergen and Hudson)

Co-Sponsored by:

**Assemblymen Garcia, Gusciora, Assemblywoman Greenstein,
Assemblymen Steele, Stanley, Zecker, Arnone, Conaway, Assemblywoman
Previte, Assemblyman Connors, Senators Bennett, Allen, Bark and Turner**

SYNOPSIS

Establishes New Jersey Prepaid Higher Education Expense Program.

CURRENT VERSION OF TEXT

As amended on November 19, 2001 by the General Assembly pursuant to the Governor's recommendations.

(Sponsorship Updated As Of: 6/29/2001)

1 AN ACT establishing a Prepaid Higher Education Expense Program,
2 amending and supplementing Title 18A of the New Jersey Statutes
3 and making an appropriation.

4
5 BE IT ENACTED by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. (New section) Sections 1 through ³[16] 17³ of this act shall be
9 known and may be cited as the "New Jersey Prepaid Higher Education
10 Expense Program Act of ³[2000] 2001³."

11
12 2. (New section) The Legislature finds and declares: that
13 educational opportunity at the college and university level is a critical
14 State interest which is linked to the needs of the State to ensure a
15 well-educated work force; that educational opportunity is best ensured
16 through the provision of institutions of higher education which are
17 geographically and financially accessible; that it is in the best interests
18 of this State to adopt and foster mechanisms which will encourage its
19 citizens to engage in the timely financial planning which is necessary
20 to guarantee that students will have the financial resources necessary
21 to pursue a higher education given the annually escalating level of
22 resources which such attendance requires; and that one such
23 mechanism which has proven successful in some other states is the
24 establishment of a program through which ¹[many] a portion¹ of the
25 costs associated with attendance at institutions of higher education
26 may be paid in advance and fixed at a guaranteed level for the duration
27 of undergraduate enrollment.

28
29 3. (New section) As used in sections 1 through ³[16] 17³ of this
30 act:

31 "Advance payment contract" means a contract entered into by the
32 board and a purchaser pursuant to the provisions of this act;

33 "Board" means the ³[²NJBEST and²]³ Prepaid Higher Education
34 Expense Board established pursuant to section 6 of this act;

35 "Eligible independent institution of higher education" means those
36 institutions of higher education incorporated and located in this State,
37 which, by virtue of law or character or license, are nonprofit
38 educational institutions empowered to grant academic degrees and
39 which provide a level of education which is equivalent to the education

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly AAP committee amendments adopted February 5, 2001.

² Senate SED committee amendments adopted March 15, 2001.

³ Assembly amendments adopted in accordance with Governor's recommendations November 19, 2001.

1 provided by the State's public institutions of higher education as
2 attested by the receipt of and continuation of regional accreditation by
3 the Middle States Association of Colleges and Schools, and which are
4 eligible to receive State aid under the provisions of the Constitution of
5 the United States and the Constitution of the State of New Jersey and
6 whose students are eligible to receive benefits under section 529 of the
7 federal Internal Revenue Code of 1986, 26 U.S.C. s.529. ¹"Eligible
8 independent institution of higher education" shall include a proprietary
9 institution if expenses for tuition at the institution would be considered
10 qualified higher education expenses under section 529 of the federal
11 Internal Revenue Code of 1986, 26 U.S.C.s.529, but only for degree
12 granting programs licensed or approved by the Commission on Higher
13 Education or for other proprietary institutions as determined by the
14 board.¹ "Eligible independent institution of higher education" does not
15 include any educational institution dedicated primarily to the
16 preparation or training of ministers, priests, rabbis, or other
17 professional persons in the field of religion;

18 "Fund" means the Prepaid Higher Education Expense Trust Fund
19 established pursuant to section 5 of this act;

20 "Institution of higher education" means an eligible educational
21 institution as defined in or for purposes of section 529 of the federal
22 Internal Revenue Code of 1986, 26 U.S.C.s.529. ¹["Institution of
23 higher education" shall include a proprietary institution if expenses for
24 tuition at the institution would be considered qualified higher
25 education expenses under section 529 of the federal Internal Revenue
26 Code of 1986, 26 U.S.C.s.529, but only for degree granting programs
27 licensed or approved by the Commission on Higher Education or for
28 other proprietary institutions as determined by the board]¹;

29 "Program" means the New Jersey Prepaid Higher Education
30 Expense Program established pursuant to section 4 of this act;

31 "Public institution of higher education" means Rutgers, The State
32 University, the State colleges or universities established pursuant to
33 chapter 64 of Title 18A of the New Jersey Statutes, the New Jersey
34 Institute of Technology, the University of Medicine and Dentistry of
35 New Jersey, the county colleges and any other public university or
36 college now or hereafter established or authorized by State law. A
37 public institution of higher education is an institution whose students
38 are eligible to receive benefits under section 529 of the federal Internal
39 Revenue Code of 1986, 26 U.S.C. s.529;

40 "Purchaser" means a person who makes or is obligated to make
41 payments in accordance with an advance payment contract;

42 "Qualified beneficiary" means: a. a resident of this State at the
43 time a purchaser enters into an advance payment contract on behalf of
44 the resident; or b. a nonresident who is the child of a noncustodial
45 parent who is a resident of the State at the time that the noncustodial
46 parent enters into an advance payment contract on behalf of the child;

1 "Tuition" means the charges imposed by an institution of higher
2 education for enrollment at the institution. ¹The ³[²NJBEST and²]³
3 Prepaid Higher Education Expense Board shall determine whether
4 mandatory fees charged by institutions of higher education shall be
5 included in the definition of tuition.¹

6
7 4. (New section) a. There is established the New Jersey Prepaid
8 Higher Education Expense Program to provide a means for payment
9 of the costs of tuition in advance of enrollment at ¹[an] a public¹
10 institution of higher education. Moneys remitted in accordance with
11 advance payment contracts shall be combined and invested in a manner
12 that ¹[yields, at a minimum,] is intended to yield¹ sufficient interest to
13 generate the difference between the prepaid amount and the average
14 in-state tuition costs at public institutions of higher education in the
15 State at the time that the benefits are exercised. ¹The program shall
16 pay to the public institution of higher education at which the qualified
17 beneficiary is enrolled an amount equal to the institution's tuition rate
18 at the time the benefits are exercised.¹

19 b. The program shall be administered by the ³[²NJBEST and²]³
20 Prepaid Higher Education Expense Board established pursuant to
21 section 6 of this act.

22
23 5. (New section) a. There is created within the ³[²NJBEST
24 and²]³ Prepaid Higher Education Expense Board the Prepaid Higher
25 Education Expense Trust Fund. The fund shall consist of State
26 appropriations, moneys acquired from other governmental or private
27 sources, and moneys remitted in accordance with advance payment
28 contracts. Dividends, interest, and gains accruing to the fund shall
29 increase the total funds available for the program.

30 b. Any funds associated with contracts for which refunds are due,
31 but have not been claimed, shall increase the total funds available for
32 the program. However, the board shall establish procedures for
33 notifying purchasers of any unclaimed refund and shall establish a time
34 period after which a refund may not be claimed.

35 c. Any balance contained in the fund at the end of a fiscal year
36 shall remain therein and shall be available for carrying out the purposes
37 of the program.

38 d. The assets of the fund shall be maintained, invested, and
39 expended solely for the purposes of this act and shall not be loaned,
40 transferred, or otherwise used by the State for any purpose other than
41 the purposes of this act. This subsection shall not be construed to
42 prohibit the board from investing in, by purchase or otherwise, bonds,
43 notes or other obligations of the State or an agency or instrumentality
44 of the State.

45 e. Unless otherwise specified by the board, assets of the fund shall
46 be expended in the following order of priority:

1 (1) to make payments to institutions of higher education on behalf
2 of qualified beneficiaries;

3 (2) to make refunds upon cancellation of advance payment
4 contracts; and

5 (3) to pay the costs of program administration and operations.

6 f. The board shall administer the fund in a manner that is
7 sufficiently actuarially sound to defray the obligations of the program.
8 The board shall annually evaluate or cause to be evaluated the
9 actuarial soundness of the fund. If the board determines a need for
10 additional assets in order to preserve actuarial soundness, the board
11 may adjust the terms of subsequent advance payment contracts to
12 ensure soundness.

13 g. If the board finds that a surplus in the fund exists, the board
14 may compensate purchasers of advance payment contracts in a manner
15 that the board determines to be appropriate.

16

17 6. (New section) a. The ³[²NJBEST and²]³ Prepaid Higher
18 Education Expense Board is established as a body corporate and
19 politic in the Executive Branch of State Government and for the
20 purposes of complying with the provisions of Article V, Section IV,
21 paragraph 1 of the New Jersey Constitution, the board is allocated
22 in²,² but not of²,² the Department of State. Notwithstanding this
23 allocation, the board shall be independent of any supervision or control
24 by the department or by any board or officer thereof.

25 b. The board shall consist of 11 members, including the State
26 Treasurer or a designee, the executive director of the Commission on
27 Higher Education or a designee, the executive director of the Higher
28 Education Student Assistance Authority or a designee, the chair of
29 the New Jersey Presidents' Council or a designee; and seven members
30 appointed by the Governor without regard for political affiliation, one
31 upon the recommendation of the Speaker of the General Assembly,
32 one upon the recommendation of the Minority Leader of the General
33 Assembly, one upon the recommendation of the President of the
34 Senate, and one upon the recommendation of the Minority Leader of
35 the Senate. Each member appointed by the Governor shall possess
36 knowledge, skill, and experience in the areas of accounting, actuary,
37 risk management or investment management. Members appointed by
38 the Governor shall serve terms of three years, except that in making
39 the initial appointments, the Governor shall appoint two members to
40 serve for one year, two members to serve for two years, and three
41 members to serve for three years. Any member appointed to fill a
42 vacancy on the board shall be appointed in a like manner and shall
43 serve until a successor qualifies. Members of the board shall serve
44 without compensation but shall be reimbursed for any necessary
45 expenses incurred in the performance of their duties.

46 c. The Governor shall appoint a member of the board to serve as

1 the initial chair of the board. Thereafter, the board shall elect a chair
2 annually. The board shall annually elect a board member to serve as
3 vice-chair and shall designate a secretary-treasurer who need not be a
4 member of the board. The secretary-treasurer shall keep a record of
5 the proceedings of the board and shall be the custodian of all printed
6 material filed with or by the board and of its official seal.
7 Notwithstanding the existence of vacancies on the board, a majority of
8 the members shall constitute a quorum. The board shall take no
9 official action in the absence of a quorum. The board shall meet, at a
10 minimum, on a quarterly basis at the call of the chair.

11 d. Neither the members of the board, nor any officer or employee
12 of the board shall be liable personally for the debts, liabilities or
13 obligations of the program established pursuant to this act.

14

15 7. (New section) The board shall have the powers necessary or
16 proper to carry out the provisions of this act, including, but not limited
17 to, the power to:

18 a. appoint an executive director to serve as the chief administrative
19 and operational officer of the board and to perform other duties
20 assigned by the board;

21 b. adopt an official seal and alter the same at pleasure;

22 c. sue and be sued in its own name;

23 d. make and enter into all contracts and agreements necessary or
24 incidental to the performance of its duties and the execution of its
25 powers in accordance with the provisions of P.L.1954, c.48 (C.52:34-
26 6 et seq.);

27 e. purchase, without advertising for bids or after having rejected
28 all bids obtained pursuant to advertising therefor, any materials,
29 supplies, goods, services or equipment pursuant to a contract or
30 contracts for such materials, supplies, goods, services or equipment
31 entered into on behalf of the State by the Division of Purchase and
32 Property;

33 f. establish agreements or other transactions with federal, State,
34 and local agencies, including institutions of higher education;

35 g. invest funds not required for immediate disbursement;

36 h. hold, buy, and sell any instruments, obligations, securities, and
37 property determined appropriate by the board;

38 i. employ personnel, including financial and computer experts,
39 legal counsel, accountants, managers and auditors, as may be
40 necessary; to fix their compensation; and to promote and discharge the
41 employees and agents; all without regard to the provisions of Title
42 11A of the New Jersey Statutes;

43 j. solicit and accept gifts, grants, loans, and other aids from any
44 source or participate in any other way in any government program to
45 carry out the purposes of this act;

46 k. require a reasonable length of State residence for qualified

- 1 beneficiaries, as appropriate;
- 2 l. reasonably restrict the number of participants in the county
3 college plan and the university plan according to criteria developed by
4 the board. A person denied participation solely on the basis of this
5 restriction shall be granted priority for participation during the
6 succeeding year;
- 7 m. segregate contributions and payments to the fund into various
8 accounts;
- 9 n. ¹[require and collect] establish reasonable¹ administrative fees
10 in connection with any transaction and impose reasonable penalties,
11 including default, for delinquent payments or for entering into an
12 advance payment contract on a fraudulent basis;
- 13 o. procure insurance against any loss in connection with the
14 property, assets and activities of the fund or the board;
- 15 p. provide for the receipt of contributions in lump sums or
16 installment payments;
- 17 q. impose reasonable ¹[time]¹ limits on ¹[use of the tuition
18 benefits provided by the program] the length of time within which a
19 qualified beneficiary shall be required to begin to exercise benefits
20 under the program. The board shall also determine whether to impose
21 limits on the total amount of time that the qualified beneficiary is
22 permitted to exercise the benefits under the program¹ ;
- 23 r. delineate the terms under which payments may be withdrawn
24 from the fund and impose reasonable fees and charges for withdrawals;
- 25 s. define for the purposes of this act the ¹[average] maximum¹
26 number of ²credit² hours ²[required for the conferral of] which may
27 be purchased under the program for² an associate degree; the
28 ¹[average] maximum¹ number of ²credit² hours ²[required for the
29 conferral of] which may be purchased under the program for² a
30 baccalaureate degree; the average current and projected tuition within
31 the county college system and the average current and projected
32 tuition of the four-year public institutions of higher education ²utilized
33 to limit the contractual obligations of the board to qualified
34 beneficiaries²;
- 35 ³[t. determine whether the New Jersey Better Educational Savings
36 Trust (NJBEST) Program established pursuant to N.J.S.18A:71B-35
37 through N.J.S.18A:71B-46 and the New Jersey Prepaid Higher
38 Education Expense Program should be marketed by a single private
39 entity and whether a single private entity should manage both
40 programs on behalf of the board;]³
- 41 ³[u.] t.³ adopt rules and regulations to implement this act; and
- 42 ³[v.] u.³ take all actions required so that the program is treated
43 as a qualified State tuition program under section 529 of the federal
44 Internal Revenue Code of 1986, 26 U.S.C.s.529.

1 8. (New section) a. The board, acting with the approval of the
2 State Investment Council in the Division of Investment, shall establish
3 a comprehensive investment plan for the purposes of this act and
4 annually review the plan to assure that the program remains actuarially
5 sound. The comprehensive investment plan shall specify the
6 investment policies to be utilized by the board in its administration of
7 the fund. The board may place assets of the fund in savings accounts
8 or use the funds to purchase fixed or variable life insurance or annuity
9 contracts, securities, evidence of indebtedness or other investment
10 products, pursuant to the comprehensive investment plan and in such
11 proportions as may be designated or approved under that plan. The
12 board shall be subject to the "prudent person" standard of care
13 applicable to the Division of Investment in the Department of the
14 Treasury pursuant to subsection b. of section 11 of P.L.1950, c.270
15 (C.52:18A-89). The insurance, annuity, savings or investment
16 products shall be underwritten and offered in compliance with the
17 applicable federal and State laws and regulations and by persons who
18 are duly authorized by applicable federal and State authorities.

19 b. The board may delegate responsibility for administration of the
20 ¹[comprehensive investment plan required pursuant to subsection a.
21 of this section] program¹ to a person the board determines to be
22 qualified. Directly or through the person, the board may contract, in
23 accordance with the provisions of P.L.1954, c.48 (C.52:34-6 et seq.),
24 with a private corporation or institution ¹authorized to do business in
25 this State¹ to provide such services as may be a part of the
26 ¹[comprehensive investment plan] program¹ or as may be deemed
27 necessary for implementation of the ¹[comprehensive investment plan]
28 program¹, including, but not limited to, providing consolidated billing,
29 individual and collective record keeping and accounting, ¹[and]¹ asset
30 purchase, control and safekeeping ¹, investment management,
31 marketing, administration, program operations, and other services
32 deemed necessary and proper to carry out the purposes of this act. ³In
33 the event that the board delegates a private entity as the investment
34 manager, the assets of the fund shall be invested in accordance with an
35 investment plan approved by the State Investment Council in the
36 Division of Investment.³

37 The board shall determine whether the services deemed necessary
38 and proper to carry out the purposes of this act shall be provided by
39 a single or multiple entities¹.

40 c. The board shall annually prepare or cause to be prepared a
41 report setting forth in appropriate detail an accounting of the fund and
42 a description of the financial condition of the program at the close of
43 each fiscal year. The report shall be submitted to the Governor, the
44 President of the Senate, the Speaker of the General Assembly, the
45 State Treasurer, the executive director of the New Jersey Commission
46 on Higher Education and the executive director of the Higher

1 Education Student Assistance Authority on or before August 1 each
2 year. In addition, the board shall make the report available to
3 purchasers of advance payment contracts. The board shall provide to
4 the Commission on Higher Education by August 1 each year complete
5 advance payment contract sales information, including projected
6 higher education enrollments of qualified beneficiaries.

7 d. The accounts of the funds shall be subject to annual audits by
8 the State Auditor or a designee. In addition, the board shall
9 commission an annual independent audit of the program. The results
10 of the independent audit shall be provided to the Governor, the
11 President of the Senate, the Speaker of the General Assembly, the
12 State Treasurer, the executive director of the New Jersey Commission
13 on Higher Education and the executive director of the Higher
14 Education Student Assistance Authority. If the board delegates
15 responsibility for the administration of the comprehensive investment
16 plan pursuant to subsection b. of this section, the cost of the
17 independent audit shall be borne by that person.

18 e. The board may make available insurance coverage written
19 exclusively for the purpose of protecting advance payment contracts,
20 and the purchasers or beneficiaries thereof, which may be issued in the
21 form of a group term life policy to purchasers of advance payment
22 contracts.

23 f. ¹[The board may solicit proposals for the marketing of the
24 program or may delegate this responsibility to the person who is
25 administering the comprehensive investment plan pursuant to
26 subsection b. of this section. The entity designated pursuant to this
27 subsection shall serve as a centralized marketing agent for the program
28 and shall be solely responsible for the marketing of the program.]¹
29 Materials produced for the purpose of marketing the program shall be
30 submitted to the board for review and approval. Marketing materials
31 shall not be made available or distributed to the public prior to the
32 materials being approved by the board. An institution of higher
33 education may distribute marketing materials produced for the
34 program. The State and the board shall not be liable for
35 misrepresentation of the program by a marketing agent.

36 ¹[A single entity may be selected to market both the New Jersey
37 Prepaid Higher Education Expense Program and the New Jersey
38 Better Educational Savings Trust (NJBEST) Program established
39 pursuant to N.J.S.18A:71B-35 through N.J.S.18A:71B-46.

40 Nothing in this subsection shall preclude the person who is
41 administering the comprehensive investment plan pursuant to
42 subsection b. of this section from marketing both the New Jersey
43 Prepaid Higher Education Expense Program and the New Jersey
44 Better Educational Savings Trust (NJBEST) Program established
45 pursuant to N.J.S.18A:71B-35 through N.J.S.18A:71B-46.]¹

46 g. Statements, reports on distributions and information returns

1 relating to accounts shall be prepared, distributed, and filed to the
2 extent required by section 529 of the federal Internal Revenue Code
3 of 1986, 26 U.S.C. s.529.

4
5 9. (New section) a. The board shall develop an advance payment
6 contract with the assistance of the Office of the Attorney General. An
7 advance payment contract shall be exempt from the provisions of
8 Subtitle 3 of Title 17 of the Revised Statutes and Subtitle 3 of Title
9 17B of the New Jersey Statutes. The contents of the contract shall
10 include, but not be limited to, the following:

11 (1) the amount of the payments and the number of payments
12 required from a purchaser;

13 (2) the terms and conditions under which purchasers are required
14 to remit payments, including, but not limited to, the date or dates upon
15 which each payment is due;

16 (3) provisions for late payment charges and for default;

17 (4) provisions for penalty fees for withdrawals from the fund;

18 (5) the name and date of birth of the qualified beneficiary on
19 whose behalf the contract is drawn and the terms and conditions under
20 which another person may be substituted as the qualified beneficiary;

21 (6) the name of any person who may cancel the contract. The
22 terms of the contract shall specify whether the contract may be
23 canceled by the purchaser, the qualified beneficiary, a specific
24 designated person or any combination of these persons;

25 (7) the terms and conditions under which a contract may be
26 canceled, the name of the person entitled to any refund due as a result
27 of the cancellation of the contract pursuant to those terms and
28 conditions, and the method for determining the amount of refund;

29 (8) the time limitations, if any, within which the qualified
30 beneficiary is required to claim benefits through the program. If time
31 limitations are included in the contract, the time expended by a
32 qualified beneficiary as an active duty member of any of the armed
33 services of the United States shall be added to the period of time
34 permitted to exercise the benefits;

35 ¹~~(9) the terms and conditions, if any, under which a purchaser may~~
36 ~~designate another individual as a successor owner of the contract;~~ ¹and

37 ¹~~[(9)] (10)~~¹ other terms and conditions deemed by the board to
38 be necessary or proper.

39 b. In addition to the provisions of subsection a. of this section an
40 advance payment contract shall include the following:

41 (1) the number of credit hours contracted by the purchaser;

42 (2) the plan toward which the credit hours shall be applied;

43 (3) the assumption of a contractual obligation by the board to the
44 qualified beneficiary to provide for a specified number of credit hours
45 of undergraduate instruction at a public institution of higher education,
46 not to exceed the ²[average] maximum² number of credit hours

1 ²[required for the conferral of the degree that corresponds to the plan
2 purchased on behalf of the qualified beneficiary] which may be
3 purchased under the program for the associate degree or the
4 baccalaureate degree, as appropriate² .

5
6 10. (New section) a. At a minimum, the board shall make
7 advance payment contracts available for two independent plans to be
8 known as the county college plan and the university plan.

9 (1) Through the county college plan, the advance payment
10 contract shall provide prepaid tuition for a specified number of
11 undergraduate credit hours not to exceed the ¹[average] maximum¹
12 number of ²credit² hours ²[required for the conferral of] which may
13 be purchased under the program for² an associate degree. The cost of
14 participation in the county college plan shall be based primarily on the
15 average current and projected tuition within the county college system
16 and the number of years expected to elapse between the purchase of
17 the plan on behalf of a qualified beneficiary and the exercise of the
18 benefits provided in the plan by the qualified beneficiary. Qualified
19 beneficiaries shall bear the cost of any laboratory fees associated with
20 enrollment in specific courses. ¹In the event that a qualified beneficiary
21 chooses to attend a four-year public institution of higher education,
22 the qualified beneficiary may convert the maximum number of credit
23 hours ²[required for the conferral of] which may be purchased under
24 the program for² an associate degree from a county college plan to a
25 university plan.¹ Each qualified beneficiary shall be classified as ²[a]
26 an in-county² resident for tuition purposes regardless of his actual
27 legal residence ¹ during the period in which benefits under the program
28 are being utilized.¹

29 (2) Through the university plan, the advance payment contract
30 shall provide prepaid tuition for a specified number of undergraduate
31 credit hours not to exceed the ¹[average] maximum¹ number of
32 ²credit² hours ²[required for the conferral of] which may be
33 purchased under the program for² a baccalaureate degree. The cost
34 of participation in the university plan shall be based primarily on the
35 average current and projected tuition of the four-year public
36 institutions of higher education and the number of years expected to
37 elapse between the purchase of the plan on behalf of a qualified
38 beneficiary and the exercise of the benefits provided in the plan by the
39 beneficiary. Qualified beneficiaries shall bear the cost of any
40 laboratory fees associated with enrollment in specific courses. In the
41 event that a qualified beneficiary fails to be admitted to a four-year
42 public institution of higher education or chooses to attend a county
43 college, the qualified beneficiary may convert the ¹[average]
44 maximum¹ number of credit hours ²[required for the conferral of]
45 which may be purchased under the program for² an associate degree

1 from a university plan to a county college plan and may retain the
2 remaining credit hours in the university plan or may request a refund
3 for prepaid credit hours in excess of the ¹[average] maximum¹
4 number of credit hours ²[required for the conferral of] which may be
5 purchased under the program for² an associate degree. ²A refund may
6 also be requested for the difference in the cost of credit hours under
7 the university plan and the county college plan for the number of credit
8 hours converted to the county college plan.² Each qualified
9 beneficiary shall be classified as a resident for tuition purposes
10 regardless of his actual legal residence ¹ during the period in which
11 benefits under the program are being utilized¹.

12 b. In addition to the plans required pursuant to subsection a. of
13 this section, the board may make advance payment contracts available
14 for other plans, such as the county college plus university plan
15 whereby the advance payment contract would provide tuition that
16 would allow a qualified beneficiary to attend a county college for an
17 associate degree and then attend a four-year public institution of
18 higher education for a baccalaureate degree.

19 c. The board shall establish procedures for conversions between
20 plans established under the program. The procedures shall include, but
21 not be limited to, the conditions under which a conversion may occur
22 and the method for calculating any refund due.

23 d. A qualified beneficiary may apply a county college plan or a
24 university plan toward any eligible independent institution of higher
25 education. The board shall transfer or cause to have transferred to the
26 eligible independent institution of higher education designated by the
27 qualified beneficiary an amount not to exceed the weighted average
28 tuition purchased under the advance payment contract. In the event
29 that the cost of tuition at the eligible independent institution of higher
30 education is less than the weighted average tuition purchased under
31 the advance payment contract, the amount transferred shall not exceed
32 the actual cost of tuition. A transfer authorized pursuant to this
33 subsection shall not exceed the number of credit hours contracted on
34 behalf of a qualified beneficiary.

35 e. A qualified beneficiary may apply the benefits of an advance
36 payment contract toward an eligible out-of-state institution of higher
37 education. Institutional eligibility for out-of-state institutions of
38 higher education shall be determined by the board, but in making
39 those determinations the board shall recognize that the benefits may
40 only be used at an out-of-state institution of higher education whose
41 students are eligible to receive benefits under section 529 of the
42 federal Internal Revenue Code of 1986, 26 U.S.C. s.529. The board
43 shall transfer or cause to have transferred to the eligible out-of-state
44 institution of higher education designated by the qualified beneficiary
45 an amount not to exceed the weighted average tuition purchased under
46 the advance payment contract. In the event that the cost of tuition at

1 the eligible out-of-state institution of higher education is less than the
2 weighted average tuition purchased under the advance payment
3 contract, the amount transferred shall not exceed the actual cost of
4 tuition. A transfer authorized pursuant to this subsection shall not
5 exceed the number of credit hours contracted on behalf of a qualified
6 beneficiary.

7

8 11. (New section) a. The board shall determine the conditions
9 under which refunds are payable under the program. Unless
10 authorized by the board or under the provisions of this section, a
11 refund shall not exceed the amount paid into the fund by the
12 purchaser. A refund may exceed the amount paid into the fund in the
13 following circumstances:

14 (1) if the qualified beneficiary is awarded a scholarship (or
15 allowance or payment described in subparagraph (B) or (C) of
16 paragraph (1) of subsection (d) of section 135 of the federal Internal
17 Revenue Code of 1986, 26 U.S.C. s.135), the terms of which cover
18 the benefits included in the advance payment contracts, moneys paid
19 for the purchase of the advance payment contracts ¹[shall] may¹ be
20 returned to the purchaser in enrollment period installments coinciding
21 with the matriculation by the qualified beneficiary in amounts equal to
22 the lesser of the original purchase price plus 5% interest compounded
23 annually, or the weighted average tuition purchased under the advance
24 payment contract; and

25 (2) in the event of the death or disability of the qualified
26 beneficiary, moneys paid for the purchase of advance payment
27 contracts shall be returned to the purchaser together with 5% interest
28 compounded annually.

29 b. A refund shall not be authorized through an advance payment
30 contract for any school year partially attended but not completed. For
31 purposes of this subsection, a school year partially attended but not
32 completed means any one enrollment period whereby the student is
33 still enrolled at the conclusion of the official drop-add period, but
34 withdraws before the end of the enrollment period.

35 c. If a qualified beneficiary does not complete a county college
36 plan or university plan, for reasons other than specified in subsection
37 a. of this section, the purchaser shall receive a refund of the amount
38 paid into the fund for the remaining unattended years of the advance
39 payment contract pursuant to rules promulgated by the board and in
40 accordance with the provisions of section 529 of the federal Internal
41 Revenue Code of 1986, 26 U.S.C. s.529.

42

43 12. (New section) Moneys paid into or out of the fund by or on
44 behalf of a purchaser or qualified beneficiary of an advance payment
45 contract for the purposes of financing the cost of qualified higher
46 education expenses under the program are exempt from all claims of

1 creditors of the purchaser or the beneficiary.

2 13. (New section) The State or any State agency, county,
3 municipality, or other political subdivision may, by contract or
4 collective bargaining agreement, agree with any employee to remit
5 payments toward advance payment contracts through payroll
6 deductions made by the appropriate officer or officers of the State,
7 State agency, county, municipality, or political subdivision. The
8 payments shall be held and administered in accordance with this act.
9

10 14. (New section) ³[In] If the investment manager is the Division
11 of Investment in the Department of the Treasury, in³ order to meet the
12 obligations of the board under this act, there shall be paid to the board
13 for deposit in the fund, at the time of distribution, subject to
14 appropriation, such sum, if any, as shall be certified by the chair of the
15 board as necessary to provide that amount at the time of distribution.
16 The chair shall make and deliver to the Governor, or his designee, the
17 certificate stating the sums, if any, required to make available in the
18 fund the amount aforesaid, and the sums so certified shall be
19 appropriated and paid to the board during the then current State fiscal
20 year.

21
22 15. (New section) In the event that the State Treasurer
23 determines the program to be financially infeasible, the State may
24 discontinue the provision of the program. A qualified beneficiary who
25 has been accepted by and is enrolled or is within five years of
26 enrollment in an institution of higher education shall be entitled to
27 exercise the benefits for which he has contracted. All other contract
28 holders shall receive a refund of the amount paid into the fund ¹[, plus
29 interest at the prevailing rate]¹.

30
31 16. (New section) a. A qualified beneficiary who graduates from
32 high school with a 3.0 cumulative grade point average on a 4.0 scale
33 in an academic program or a 3.2 cumulative grade point average on a
34 4.0 scale in a vocational-educational program, based upon grades in
35 core curriculum content subject areas as determined by the board, or
36 who graduates in the top 15% of his high school graduating class shall
37 be admitted to a public institution of higher education. In order to be
38 admitted to a public institution of higher education pursuant to this
39 section, the qualified beneficiary shall meet all of the institution's
40 requirements for admittance. This provision shall not be construed to
41 promise or guarantee that a qualified beneficiary shall be admitted to
42 a particular public institution of higher education.

43 b. In order to effectuate the provisions of subsection a. of this
44 section, the board, in consultation with the Commission on Higher
45 Education, shall develop a process to assist qualified beneficiaries in
46 applying to all public institutions of higher education.

1 ³[17. (New section) Moneys paid into or out of an account by or
2 on behalf of a contributor or designated beneficiary for the purposes
3 of financing the cost of qualified higher education expenses under the
4 New Jersey Better Educational Savings Trust (NJBEST) Program, are
5 exempt from all claims of creditors of the contributor or the
6 designated beneficiary.]³

7

8 ³[18. N.J.S.18A:71B-36 is amended to read as follows:

9 18A:71B-36. As used in this article:

10 "Account" means an individual trust account or savings account
11 established in accordance with this article;

12 ["Authority" means the Higher Education Student Assistance
13 Authority;]

14 "Board" means the ²NJBEST and ² Prepaid Higher Education
15 Expense Board established pursuant to section 6 of P.L. _____, c.
16 (C. _____) (now pending before the Legislature as this bill).

17 "Contributor" means the person or organization contributing to and
18 maintaining an account and having the right to withdraw funds from
19 the account before the account is disbursed to or for the benefit of the
20 designated beneficiary;

21 "Designated beneficiary" means: a. the individual designated at the
22 time the account is opened as the individual whose higher education
23 expenses are expected to be paid from the account; b. the replacement
24 beneficiary if the change in designated beneficiary would not result in
25 a distribution that is included in federal gross income under section
26 529 of the federal Internal Revenue Code of 1986, 26 U.S.C.s.529;
27 and c. in the case of an interest in the program purchased by a state or
28 local government or an organization described in paragraph (3) of
29 subsection (c) of section 501 of the federal Internal Revenue Code of
30 1986, 26 U.S.C.s.501 and exempt from taxation under subsection (a)
31 of section 501 of the federal Internal Revenue Code of 1986, 26
32 U.S.C.s.501, as a part of a scholarship program operated by the
33 government or organization, the individual receiving the interest as a
34 scholarship;

35 "Higher education institution" means an eligible educational
36 institution as defined in or for purposes of section 529 of the federal
37 Internal Revenue Code of 1986, 26 U.S.C.s.529. Higher education
38 institution shall include a proprietary institution if expenses for tuition
39 at the institution would be considered qualified higher education
40 expenses under section 529 of the federal Internal Revenue Code of
41 1986, 26 U.S.C.s.529, but only for degree granting programs licensed
42 or approved by the Commission on Higher Education or for other
43 proprietary institutions as determined by the [authority] board;

44 "Investment Manager" means the Division of Investment in the
45 Department of the Treasury or the private entities authorized to do
46 business in this State that may be designated by the [authority] board

1 to invest the funds of the trust pursuant to the terms of this article;

2 "Member of the family" means a member of the family as defined in
3 or for purposes of section 529 of the federal Internal Revenue Code
4 of 1986, 26 U.S.C.s.529;

5 "Nonqualified withdrawal" means a withdrawal from an account
6 other than: a. a qualified withdrawal; b. a withdrawal made as the
7 result of the death or disability of the designated beneficiary of an
8 account; c. a withdrawal made on account of a scholarship (or
9 allowance or payment described in subparagraph (B) or (C) of
10 paragraph (1) of subsection (d) of section 135 of the federal Internal
11 Revenue Code of 1986, 26 U.S.C.s.135) received by the designated
12 beneficiary, but only to the extent of the amount of that scholarship,
13 allowance or payment; d. a rollover or change in designated
14 beneficiary which would not result in a distribution includible in
15 federal gross income under section 529 of the federal Internal Revenue
16 Code of 1986, 26 U.S.C.s.529; or e. any other withdrawal if the failure
17 of the program to impose a more than de minimis penalty on the
18 withdrawal would cause the program not to be a qualified State tuition
19 program under section 529 of the federal Internal Revenue Code of
20 1986, 26 U.S.C.s.529;

21 "Program" means the "New Jersey Better Educational Savings Trust
22 (NJBEST) Program" established pursuant to this article;

23 "Qualified higher education expenses" means expenses described in
24 paragraph (3) of subsection (e) of section 529 of the federal Internal
25 Revenue Code of 1986, 26 U.S.C.s.529 incurred in connection with
26 the enrollment of a designated beneficiary at a higher education
27 institution;

28 "Qualified withdrawal" means a withdrawal from an account to pay
29 the qualified higher education expenses of the designated beneficiary
30 of the account; but a withdrawal shall not be considered a qualified
31 withdrawal if the failure of the program to impose a more than de
32 minimis penalty on the withdrawal would cause the program not to
33 qualify as a qualified State tuition program under section 529 of the
34 federal Internal Revenue Code of 1986, U.S.C.s.529;

35 "Trust" means the "New Jersey Better Educational Savings Trust"
36 established pursuant to N.J.S.18A:71B-37.

37 (cf: N.J.S.18A:71B-36)]³

38

39 ³[19. N.J.S.18A:71B-37 is amended to read as follows:

40 18A:71B-37. There is created within the [Higher Education
41 Student Assistance Authority] ²NJBEST and² Prepaid Higher
42 Education Expense Board the New Jersey Better Educational Savings
43 Trust (NJBEST). The trust shall provide a mechanism through which
44 the [authority] board, as trustee, holds accounts established and
45 maintained pursuant to the provisions of this article to finance the cost
46 of qualified higher education expenses.

47 (cf: N.J.S.18A:71B-37)]³

1 ³[20. N.J.S.18A:71B-38 is amended to read as follows:
2 18A:71B-38. The [Higher Education Student Assistance Authority]
3 ²NJBEST and² Prepaid Higher Education Expense Board established
4 pursuant to section 6 of P.L. , c. (C.)(now pending before the
5 Legislature as this bill) shall administer the NJBEST Program. The
6 [authority] board shall have the power to:
7 a. serve as trustee of the trust;
8 b. adopt rules and regulations pursuant to the "Administrative
9 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), necessary to
10 carry out the provisions of this article;
11 c. prescribe and provide appropriate forms for participation in the
12 program;
13 d. select an investment manager and any other contractors needed
14 to manage and market the program;
15 e. monitor the investment manager and any other contractors by
16 audits and other reports;
17 f. collect reasonable administrative fees in connection with any
18 contract or transaction relating to the program;
19 g. impose penalties for nonqualified withdrawals;
20 h. take all actions required so that the program is treated as a
21 qualified State tuition program under section 529 of the federal
22 Internal Revenue Code of 1986, 26 U.S.C.s.529; and
23 i. perform any other acts which may be deemed necessary or
24 appropriate to carry out the objects and purposes of this article.
25 (cf: N.J.S.18A:71B-38)]³

26
27 ³[21. N.J.S.18A:71B-39 is amended to read as follows:
28 18A:71B-39. Neither the members of the [authority] board, nor
29 any officer or employee of the [authority] board shall be liable
30 personally for the debts, liabilities or obligations of the program
31 established pursuant to this article.
32 (cf: N.J.S.18A:71B-39)]³

33
34 ³17. (New Section) a. Nothing in this article shall be construed to
35 guarantee that a qualified beneficiary will be admitted to a particular
36 higher education institution or be allowed to continue enrollment at or
37 graduate from a higher education institution after admission.
38 b. Nothing in this article shall establish any obligation or liability on
39 the part of this State or any agency or instrumentality of this State
40 with respect to any federal or State tax liability of any contributor or
41 designated beneficiary in this program.
42 c. Under regulations promulgated by the board, every contract and
43 application that may be used in connection with the program shall
44 clearly indicate that the contract is not insured by this State, other than
45 as set forth in sections 14 and 15 of P.L. , c. (C.)(now pending
46 before the Legislature as this bill).³

1 ³[22.] 18.³ N.J.S.18A:71B-40 is amended to read as follows:

2 18A:71B-40. a. The [authority] ³[board] authority³ shall select
3 an investment manager or managers to invest the funds of the trust or
4 the funds in accounts. In making this selection, any investment
5 manager shall be subject to the "prudent person" standard of care
6 applicable to the Division of Investment in the Department of the
7 Treasury pursuant to subsection b. of section 11 of P.L.1950, c.270
8 (C.52:18A-89), and the [authority] ³[board] authority³ shall consider
9 the impact of fees and costs imposed by the manager or managers on
10 yield to contributors.

11 b. The [authority] ³[board] authority³ may select more than one
12 investment manager and investment instrument for the program if it is
13 in the best interest of contributors and will not interfere with the
14 administration of the program.

15 c. The [authority] ³[board] authority³ may provide a contributor
16 with a choice of investment managers or investment instruments or
17 both for the program if both of the following conditions exist:

18 (1) the federal Internal Revenue Service has provided guidance that
19 providing a contributor with a choice of investment managers or
20 instruments under a State tuition program will not cause the program
21 to fail to qualify for favorable tax treatment under section 529 of the
22 federal Internal Revenue Code of 1986, 26 U.S.C.s.529; and

23 (2) the [authority] ³[board] authority³ concludes that a choice of
24 investment managers or of investment instruments is in the best
25 interest of contributors and will not interfere with the administration
26 of the program.

27 d. If the [authority] ³[board] authority³ terminates the designation
28 of an investment manager to hold accounts, and accounts must be
29 moved from that investment manager to another investment manager,
30 the [authority] ³[board] authority³ shall select the investment
31 manager and type of investment instrument to which the balance of the
32 account is moved, unless the federal Internal Revenue Service provides
33 guidance that allowing the contributor to select among several
34 investment managers or investment instruments that have been selected
35 by the [authority] ³[board] authority³ would not cause a program to
36 cease to be a qualified State tuition program for the purposes of
37 section 529 of the federal Internal Revenue Code, 26 U.S.C.s.529.

38 e. ³[The board, upon the effective date of P.L. _____, c. _____
39 (C. _____)(now pending before the Legislature as this bill) and in
40 accordance with the provisions of P.L.1954, c.48 (C.52:34-6 et seq.),
41 shall select an investment manager or managers for the program.]³ If
42 the selection process provided for in this ³[subsection] section³
43 results in an investment manager other than the Division of
44 Investment, the ³[board] authority ³shall provide for the orderly
45 transfer of accounts and shall ensure that all the rights of the
46 contributors and designated beneficiaries participating in the program

1 as of the effective date of P.L. _____, c. _____(now pending before
2 the Legislature as this bill), are protected.
3 (cf: N.J.S.18A:71B-40)

4
5 ³[23. N.J.S.18A:71B-41 is amended to read as follows:

6 18A:71B-41. a. The program shall be operated as a trust through
7 the use of accounts for designated beneficiaries. An account may be
8 opened by any person who desires to save to pay the qualified higher
9 education expenses of an individual by satisfying each of the following
10 requirements:

11 (1) completing an application in the form prescribed by the
12 [authority] board;

13 (2) paying the one-time application fee established by the
14 [authority] board;

15 (3) making the minimum contribution required by the [authority]
16 board for opening an account;

17 (4) designating the account or accounts to be opened; and

18 (5) in the case of an account to which subsection a. of
19 N.J.S.A.18A:71B-44 would apply, demonstrating to the satisfaction
20 of the [authority] board that either the contributor, if an individual, or
21 the designated beneficiary is a New Jersey resident. The requirement
22 of New Jersey residency for either the contributor or the designated
23 beneficiary would not apply to an account to which subsection b. of
24 N.J.S.18A:71B-44 would apply unless otherwise determined by the
25 [authority] board.

26 b. Except as provided under N.J.S.18A:71B-42, only the
27 contributor may make contributions to an account after the account is
28 opened.

29 c. Contributions to accounts shall be made only in cash, as defined
30 by the [authority] board pursuant to regulations, in accordance with
31 section 529 of the federal Internal Revenue Code of 1986, 26
32 U.S.C.s.529.

33 d. Contributors may withdraw all or part of the balance from an
34 account on sixty days' notice or a shorter period, as may be authorized
35 by the [authority] board pursuant to regulations.

36 e. A contributor may change the designated beneficiary of an
37 account or rollover all or a portion of an account to another account
38 if the change or rollover would not result in a distribution includible
39 in gross income under section 529 of the federal Internal Revenue
40 Code of 1986, 26 U.S.C.s.529, in accordance with procedures
41 established by the [authority] board.

42 f. In the case of any nonqualified withdrawal, a penalty at a level
43 established by the [authority] board and sufficient to be considered a
44 more than de minimis penalty for purposes of section 529 of the
45 federal Internal Revenue Code of 1986, 26 U.S.C.s.529, shall be
46 withheld and paid to the [authority] board for use in operating and

1 marketing the program. The [authority] board may elect not to
2 impose a penalty if that section ceases to include a provision requiring
3 more than de minimis penalties for a program to qualify as a qualified
4 State tuition program.

5 g. If a contributor makes a nonqualified withdrawal and a penalty
6 amount is not withheld pursuant to subsection f. of this section or the
7 amount withheld is less than the amount required to be withheld under
8 that subsection, the contributor shall pay the unpaid portion of the
9 penalty to the [authority] board at the same time that the contributor
10 files a State income tax return for the taxable year of the withdrawal,
11 or if the contributor does not file a return, the unpaid portion of the
12 penalty shall be paid on or before the due date for the filing of that
13 income tax return.

14 h. Each account shall be maintained separately from each other
15 account under the program.

16 i. Separate records and accounting shall be maintained for each
17 account for each designated beneficiary.

18 j. A contributor to or designated beneficiary of any account shall
19 not direct the investment of any contributions to an account or the
20 earnings from the account, except as permitted under section 529 of
21 the federal Internal Revenue Code of 1986, 26 U.S.C.s.529.

22 k. A contributor or a designated beneficiary shall not use an
23 interest in an account as security for a loan. Any pledge of an interest
24 in an account is of no force and effect.

25 l. The maximum contribution for any designated beneficiary shall
26 be determined by the [authority] board pursuant to regulations, in
27 accordance with section 529 of the federal Internal Revenue Code of
28 1986, 26 U.S.C.s.529.

29 m. Statements, reports on distributions and information returns
30 relating to accounts shall be prepared, distributed, and filed to the
31 extent required by section 529 of the federal Internal Revenue Code
32 of 1986, 26 U.S.C.s.529, or regulations issued thereunder.

33 n. The [authority] board may charge, impose and collect
34 reasonable administrative fees and service charges in connection with
35 any agreement, contract or transaction relating to the program. These
36 fees and charges may be imposed directly on contributors or may be
37 taken as a percentage of the investment earnings on accounts.

38 o. The State or any State agency, municipality, or other political
39 subdivision may, by contract or collective bargaining agreement, agree
40 with any employee to remit contributions to accounts through payroll
41 deductions made by the appropriate officer or officers of the State,
42 State agency, county, municipality, or political subdivision. The
43 contributions shall be held and administered in accordance with this
44 act.

45 (cf: N.J.S.18A:71B-41)]³

46 ³[24. N.J.S.18A:71B-42 is amended to read as follows:

47 18A:71B-42. a. An amount of no less than \$500 shall be provided

1 by the State for the qualified higher education expenses of a
2 designated beneficiary at the time of a qualified withdrawal provided
3 that:

4 (1) the contributor demonstrates, to the satisfaction of the
5 [authority] board, that the contributor participated in the program for
6 at least four years by making a qualifying minimum initial deposit or
7 qualifying minimum annual contributions, or both, as shall be
8 determined by the [authority] board, for a designated beneficiary;

9 (2) the designated beneficiary demonstrates, to the satisfaction of
10 the [authority] board, attendance or enrollment in a higher education
11 institution in this State, at the time of initial attendance or enrollment
12 in the higher education institution; and

13 (3) either the contributor, if an individual, or the designated
14 beneficiary demonstrates, to the satisfaction of the [authority] board,
15 that the contributor or designated beneficiary is a New Jersey resident.

16 b. The amount provided under subsection a. of this section shall
17 meet the requirements of a qualified scholarship within the meaning of
18 section 117 of the federal Internal Revenue Code of 1986,
19 26 U.S.C.s.117, for a designated beneficiary satisfying the
20 requirements of subsection a. of this section.

21 c. A designated beneficiary shall not receive more than one State
22 scholarship provided pursuant to subsection a. of this section.

23 (cf: N.J.S.18A:71B-42)]³

24

25 ³[25. N.J.S.18A:71B-43 is amended to read as follows:

26 18A:71B-43. Annually, the [authority] board shall determine a
27 dollar amount of an account, which shall not be less than \$25,000,
28 which shall not be considered in evaluating the financial needs of a
29 student enrolled in an institution of higher education located in the
30 State of New Jersey, or be deemed a financial resource or a form of
31 financial aid or assistance to a student, for purposes of determining the
32 eligibility of a student for any scholarship, grant, or monetary
33 assistance awarded by the State; nor shall the amount of any account
34 as determined by the [authority] board provided for a designated
35 beneficiary under this article reduce the amount of any scholarship
36 grant or monetary assistance which the student is entitled to be
37 awarded by the State.

38 (cf: N.J.S.18A:71B-43)]³

39

40 ³[26.] 19.³ N.J.S.18A:71B-44 is amended to read as follows:

41 18A:71B-44. a. If the investment manager is the Division of
42 Investment in the Department of the Treasury, in order to assure the
43 availability of principal of any amount contributed under this article,
44 there shall be paid to the [authority] ³[board] authority³ for deposit
45 in the trust, at the time of distribution, subject to appropriation, such
46 sum, if any, as shall be certified by the [chairperson] chair of the

1 [authority] ³[board] authority³ as necessary to provide that amount
2 at the time of distribution. The [chairperson] chair shall make and
3 deliver to the Governor, or his designee, the certificate stating the
4 sums, if any, required to make available in the trust the amount
5 aforesaid, and the sums so certified shall be appropriated and paid to
6 the [authority] ³[board] authority³ during the then current State
7 fiscal year.

8 b. If the investment manager is a private entity, the investment of
9 the principal and interest of any amount contributed under this article
10 shall be ¹[backed by the full faith and credit of the United States or be
11 fully insured by the Federal Deposit Insurance Corporation or other
12 similar insurer backed by the full faith and credit of the United States.
13 No account balance shall exceed the maximum amount of insurance
14 provided by the insurer. No investment is permitted in derivatives of
15 eligible securities, and any investment must be designed to balance
16 prospective payments according to the guidelines established] made
17 in accordance with an investment plan approved by the State
18 Investment Council in the Division of Investment¹.
19 (cf: N.J.S.18A:71B-44)

20

21 ³[27. N.J.S.18A:71B-45 is amended to read as follows:

22 18A:71B-45. a. Nothing in this article shall be construed to:

23 (1) guarantee that a designated beneficiary will be admitted to a
24 higher education institution or be allowed to continue enrollment at or
25 graduate from a higher education institution after admission;

26 (2) establish State residency for a person merely because the person
27 is a designated beneficiary; or

28 (3) guarantee that amounts saved pursuant to the program will be
29 sufficient to cover the qualified higher education expenses of a
30 designated beneficiary.

31 b. Nothing in this article establishes any obligation of this State or
32 any agency or instrumentality of this State to guarantee for the benefit
33 of any contributor or designated beneficiary any of the following:

34 (1) the rate of interest or other return on any account; or

35 (2) the payment of interest or other return on any account.

36 c. Nothing in this article establishes any obligation or liability of
37 this State or any agency or instrumentality of this State with respect
38 to any federal or State tax liability of any contributor or designated
39 beneficiary in this program.

40 d. Under regulations promulgated by the [authority] board, every
41 contract and application that may be used in connection with a
42 contribution to an account shall clearly indicate that the account is not
43 insured by this State nor is the investment return guaranteed by this
44 State.

45 (cf: N.J.S.18A:71B-45)]³

46

1 ³[28. N.J.S.18A:71B-46 is amended to read as follows:
2 18A:71B-46. If the Congress of the United States enacts legislation
3 that exempts educational savings accounts from federal income
4 taxation, sections N.J.S.18A:71B-42 and N.J.S.18A:71B-43 shall
5 apply with respect to such educational savings accounts as if they were
6 accounts established under this act and the beneficiaries of the
7 accounts were designated beneficiaries subject to the approval of the
8 **[New Jersey Higher Education Assistance Authority] board.**
9 (cf: N.J.S.18A:71B-46)]³

10

11 ³[29. (New section) Regulations adopted by the New Jersey
12 Higher Education Student Assistance Authority pertaining to the New
13 Jersey Better Educational Savings Trust (NJBEST) Program shall
14 continue with full force and effect under the board for a period of one
15 year from the effective date of this act or until amended, continued or
16 repealed by the board pursuant to law.]³

17

18 ³20. (New section) Moneys paid into or out of a NJBEST account
19 by or on behalf of a contributor or designated beneficiary for the
20 purposes of financing the cost of qualified higher education expenses
21 under this article are exempt from all claims of creditors of the
22 contributor or the designated beneficiary.³

23

24 ³[30.] 21.³ Section 13 of P.L..1997, c.237 (C.54A:6-25) is
25 amended to read as follows:

26 13. a. Gross income shall not include earnings on an education
27 individual retirement account or a qualified State tuition program
28 account until the earnings are distributed from the account, at which
29 time they shall be includible in the gross income of the distributee
30 except as provided in this section.

31 b. Gross income shall not include qualified distributions as defined
32 in paragraph (3) of subsection c. of this section.

33 c. For purposes of this section:

34 (1) "Education individual retirement account" means an education
35 retirement account as defined pursuant to paragraph (1) of subsection
36 (b) of section 530 of the federal Internal Revenue Code of 1986,
37 26 U.S.C. s.530.

38 (2) "Qualified State tuition program account" means an account
39 established pursuant to the "New Jersey Better Educational Savings
40 Trust (NJBEST) Program," (N.J.S.18A:71B-35 et seq.) , an account
41 established pursuant to the "New Jersey Prepaid Higher Education
42 Expense Program,"(P.L. , c. (C.))(now pending before the
43 Legislature as this bill) or an account established pursuant to any
44 qualified State tuition program, as defined pursuant to subsection (b)
45 of section 529 of the federal Internal Revenue Code of 1986,
46 26 U.S.C. s.529 or a tuition credit or certificate purchased pursuant to
47 any such program.

1 (3) "Qualified distribution" means any of the following:

2 (a) a distribution from a qualified State tuition program account
3 that is used for qualified higher education expenses as defined pursuant
4 to paragraph (3) of subsection (e) of section 529 of the federal Internal
5 Revenue Code of 1986, 26 U.S.C. s.529;

6 (b) a rollover from one account to another account as described in
7 clause (i) of subparagraph (C) of paragraph (3) of subsection (c) of
8 section 529 or paragraph (5) of subsection (d) of section 530 of the
9 federal Internal Revenue Code of 1986, 26 U.S.C. s.529 or 530;

10 (c) a change in designated beneficiaries of an account as described
11 in clause (ii) of subparagraph (C) of paragraph (3) of subsection (c) of
12 section 529 or paragraph (6) of subsection (d) of section 530 of the
13 federal Internal Revenue Code of 1986, 26 U.S.C. s.529 or 530;

14 d. The portion of a distribution from an education individual
15 retirement account or a qualified State tuition program account that is
16 attributable to earnings shall be determined in accordance with the
17 principles of section 72 of the federal Internal Revenue Code of 1986,
18 26 U.S.C. s.72, as applied for purposes of sections 529 and 530 of the
19 federal Internal Revenue Code of 1986, 26 U.S.C. ss.529 and 530.

20 (cf: P.L.1999, c.116, s.1)

21

22 ³[31.] 22.³ There is appropriated from the General Fund to the
23 ³[²NJBEST and²]³ Prepaid Higher Education Expense Board in, but
24 not of, the Department of State \$250,000 to effectuate the provisions
25 of this act.

26

27 ³[32.] 23.³ This act shall take effect immediately.

Title 18A.
Chapter 71B.
Article 11. (New)
New Jersey Prepaid
Higher Education
Expense Program
§§1-17 -
C.18A:71B-64 to
18A:71B-80
§20 -
C.18A:71B-41.1
§§22 - Approp.

P.L. 2001, CHAPTER 262, *approved December 11, 2001*
Assembly Committee Substitute (*Third Reprint*) for
Assembly, Nos. 1622 and 2296

1 AN ACT establishing a Prepaid Higher Education Expense Program,
2 amending and supplementing Title 18A of the New Jersey Statutes
3 and making an appropriation.
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. (New section) Sections 1 through ³[16] 17³ of this act shall be
9 known and may be cited as the "New Jersey Prepaid Higher Education
10 Expense Program Act of ³[2000] 2001³."

11
12 2. (New section) The Legislature finds and declares: that
13 educational opportunity at the college and university level is a critical
14 State interest which is linked to the needs of the State to ensure a
15 well-educated work force; that educational opportunity is best ensured
16 through the provision of institutions of higher education which are
17 geographically and financially accessible; that it is in the best interests
18 of this State to adopt and foster mechanisms which will encourage its
19 citizens to engage in the timely financial planning which is necessary
20 to guarantee that students will have the financial resources necessary
21 to pursue a higher education given the annually escalating level of
22 resources which such attendance requires; and that one such
23 mechanism which has proven successful in some other states is the
24 establishment of a program through which ¹[many] a portion¹ of the
25 costs associated with attendance at institutions of higher education
26 may be paid in advance and fixed at a guaranteed level for the duration
27 of undergraduate enrollment.

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly AAP committee amendments adopted February 5, 2001.

² Senate SED committee amendments adopted March 15, 2001.

³ Assembly amendments adopted in accordance with Governor's recommendations November 19, 2001.

1 3. (New section) As used in sections 1 through ³[16] 17³ of this
2 act:

3 "Advance payment contract" means a contract entered into by the
4 board and a purchaser pursuant to the provisions of this act;

5 "Board" means the ³[²NJBEST and²]³ Prepaid Higher Education
6 Expense Board established pursuant to section 6 of this act;

7 "Eligible independent institution of higher education" means those
8 institutions of higher education incorporated and located in this State,
9 which, by virtue of law or character or license, are nonprofit
10 educational institutions empowered to grant academic degrees and
11 which provide a level of education which is equivalent to the education
12 provided by the State's public institutions of higher education as
13 attested by the receipt of and continuation of regional accreditation by
14 the Middle States Association of Colleges and Schools, and which are
15 eligible to receive State aid under the provisions of the Constitution of
16 the United States and the Constitution of the State of New Jersey and
17 whose students are eligible to receive benefits under section 529 of the
18 federal Internal Revenue Code of 1986, 26 U.S.C. s.529. ¹"Eligible
19 independent institution of higher education" shall include a proprietary
20 institution if expenses for tuition at the institution would be considered
21 qualified higher education expenses under section 529 of the federal
22 Internal Revenue Code of 1986, 26 U.S.C.s.529, but only for degree
23 granting programs licensed or approved by the Commission on Higher
24 Education or for other proprietary institutions as determined by the
25 board.¹ "Eligible independent institution of higher education" does not
26 include any educational institution dedicated primarily to the
27 preparation or training of ministers, priests, rabbis, or other
28 professional persons in the field of religion;

29 "Fund" means the Prepaid Higher Education Expense Trust Fund
30 established pursuant to section 5 of this act;

31 "Institution of higher education" means an eligible educational
32 institution as defined in or for purposes of section 529 of the federal
33 Internal Revenue Code of 1986, 26 U.S.C.s.529. ¹["Institution of
34 higher education" shall include a proprietary institution if expenses for
35 tuition at the institution would be considered qualified higher
36 education expenses under section 529 of the federal Internal Revenue
37 Code of 1986, 26 U.S.C.s.529, but only for degree granting programs
38 licensed or approved by the Commission on Higher Education or for
39 other proprietary institutions as determined by the board]¹;

40 "Program" means the New Jersey Prepaid Higher Education
41 Expense Program established pursuant to section 4 of this act;

42 "Public institution of higher education" means Rutgers, The State
43 University, the State colleges or universities established pursuant to
44 chapter 64 of Title 18A of the New Jersey Statutes, the New Jersey
45 Institute of Technology, the University of Medicine and Dentistry of
46 New Jersey, the county colleges and any other public university or

1 college now or hereafter established or authorized by State law. A
2 public institution of higher education is an institution whose students
3 are eligible to receive benefits under section 529 of the federal Internal
4 Revenue Code of 1986, 26 U.S.C. s.529;

5 "Purchaser" means a person who makes or is obligated to make
6 payments in accordance with an advance payment contract;

7 "Qualified beneficiary" means: a. a resident of this State at the
8 time a purchaser enters into an advance payment contract on behalf of
9 the resident; or b. a nonresident who is the child of a noncustodial
10 parent who is a resident of the State at the time that the noncustodial
11 parent enters into an advance payment contract on behalf of the child;

12 "Tuition" means the charges imposed by an institution of higher
13 education for enrollment at the institution. ¹The ³[²NJBEST and²]³
14 Prepaid Higher Education Expense Board shall determine whether
15 mandatory fees charged by institutions of higher education shall be
16 included in the definition of tuition.¹

17
18 4. (New section) a. There is established the New Jersey Prepaid
19 Higher Education Expense Program to provide a means for payment
20 of the costs of tuition in advance of enrollment at ¹[an] a public¹
21 institution of higher education. Moneys remitted in accordance with
22 advance payment contracts shall be combined and invested in a manner
23 that ¹[yields, at a minimum,] is intended to yield¹ sufficient interest to
24 generate the difference between the prepaid amount and the average
25 in-state tuition costs at public institutions of higher education in the
26 State at the time that the benefits are exercised. ¹The program shall
27 pay to the public institution of higher education at which the qualified
28 beneficiary is enrolled an amount equal to the institution's tuition rate
29 at the time the benefits are exercised.¹

30 b. The program shall be administered by the ³[²NJBEST and²]³
31 Prepaid Higher Education Expense Board established pursuant to
32 section 6 of this act.

33
34 5. (New section) a. There is created within the ³[²NJBEST
35 and²]³ Prepaid Higher Education Expense Board the Prepaid Higher
36 Education Expense Trust Fund. The fund shall consist of State
37 appropriations, moneys acquired from other governmental or private
38 sources, and moneys remitted in accordance with advance payment
39 contracts. Dividends, interest, and gains accruing to the fund shall
40 increase the total funds available for the program.

41 b. Any funds associated with contracts for which refunds are due,
42 but have not been claimed, shall increase the total funds available for
43 the program. However, the board shall establish procedures for
44 notifying purchasers of any unclaimed refund and shall establish a time
45 period after which a refund may not be claimed.

46 c. Any balance contained in the fund at the end of a fiscal year

1 shall remain therein and shall be available for carrying out the purposes
2 of the program.

3 d. The assets of the fund shall be maintained, invested, and
4 expended solely for the purposes of this act and shall not be loaned,
5 transferred, or otherwise used by the State for any purpose other than
6 the purposes of this act. This subsection shall not be construed to
7 prohibit the board from investing in, by purchase or otherwise, bonds,
8 notes or other obligations of the State or an agency or instrumentality
9 of the State.

10 e. Unless otherwise specified by the board, assets of the fund shall
11 be expended in the following order of priority:

12 (1) to make payments to institutions of higher education on behalf
13 of qualified beneficiaries;

14 (2) to make refunds upon cancellation of advance payment
15 contracts; and

16 (3) to pay the costs of program administration and operations.

17 f. The board shall administer the fund in a manner that is
18 sufficiently actuarially sound to defray the obligations of the program.
19 The board shall annually evaluate or cause to be evaluated the
20 actuarial soundness of the fund. If the board determines a need for
21 additional assets in order to preserve actuarial soundness, the board
22 may adjust the terms of subsequent advance payment contracts to
23 ensure soundness.

24 g. If the board finds that a surplus in the fund exists, the board
25 may compensate purchasers of advance payment contracts in a manner
26 that the board determines to be appropriate.

27

28 6. (New section) a. The ³[²NJBEST and²]³ Prepaid Higher
29 Education Expense Board is established as a body corporate and
30 politic in the Executive Branch of State Government and for the
31 purposes of complying with the provisions of Article V, Section IV,
32 paragraph 1 of the New Jersey Constitution, the board is allocated
33 in² ₂ but not of² ₂ the Department of State. Notwithstanding this
34 allocation, the board shall be independent of any supervision or control
35 by the department or by any board or officer thereof.

36 b. The board shall consist of 11 members, including the State
37 Treasurer or a designee, the executive director of the Commission on
38 Higher Education or a designee, the executive director of the Higher
39 Education Student Assistance Authority or a designee, the chair of
40 the New Jersey Presidents' Council or a designee; and seven members
41 appointed by the Governor without regard for political affiliation, one
42 upon the recommendation of the Speaker of the General Assembly,
43 one upon the recommendation of the Minority Leader of the General
44 Assembly, one upon the recommendation of the President of the
45 Senate, and one upon the recommendation of the Minority Leader of
46 the Senate. Each member appointed by the Governor shall possess

1 knowledge, skill, and experience in the areas of accounting, actuary,
2 risk management or investment management. Members appointed by
3 the Governor shall serve terms of three years, except that in making
4 the initial appointments, the Governor shall appoint two members to
5 serve for one year, two members to serve for two years, and three
6 members to serve for three years. Any member appointed to fill a
7 vacancy on the board shall be appointed in a like manner and shall
8 serve until a successor qualifies. Members of the board shall serve
9 without compensation but shall be reimbursed for any necessary
10 expenses incurred in the performance of their duties.

11 c. The Governor shall appoint a member of the board to serve as
12 the initial chair of the board. Thereafter, the board shall elect a chair
13 annually. The board shall annually elect a board member to serve as
14 vice-chair and shall designate a secretary-treasurer who need not be a
15 member of the board. The secretary-treasurer shall keep a record of
16 the proceedings of the board and shall be the custodian of all printed
17 material filed with or by the board and of its official seal.
18 Notwithstanding the existence of vacancies on the board, a majority of
19 the members shall constitute a quorum. The board shall take no
20 official action in the absence of a quorum. The board shall meet, at a
21 minimum, on a quarterly basis at the call of the chair.

22 d. Neither the members of the board, nor any officer or employee
23 of the board shall be liable personally for the debts, liabilities or
24 obligations of the program established pursuant to this act.

25
26 7. (New section) The board shall have the powers necessary or
27 proper to carry out the provisions of this act, including, but not limited
28 to, the power to:

29 a. appoint an executive director to serve as the chief administrative
30 and operational officer of the board and to perform other duties
31 assigned by the board;

32 b. adopt an official seal and alter the same at pleasure;

33 c. sue and be sued in its own name;

34 d. make and enter into all contracts and agreements necessary or
35 incidental to the performance of its duties and the execution of its
36 powers in accordance with the provisions of P.L.1954, c.48 (C.52:34-
37 6 et seq.);

38 e. purchase, without advertising for bids or after having rejected
39 all bids obtained pursuant to advertising therefor, any materials,
40 supplies, goods, services or equipment pursuant to a contract or
41 contracts for such materials, supplies, goods, services or equipment
42 entered into on behalf of the State by the Division of Purchase and
43 Property;

44 f. establish agreements or other transactions with federal, State,
45 and local agencies, including institutions of higher education;

46 g. invest funds not required for immediate disbursement;

- 1 h. hold, buy, and sell any instruments, obligations, securities, and
2 property determined appropriate by the board;
- 3 i. employ personnel, including financial and computer experts,
4 legal counsel, accountants, managers and auditors, as may be
5 necessary; to fix their compensation; and to promote and discharge the
6 employees and agents; all without regard to the provisions of Title
7 11A of the New Jersey Statutes;
- 8 j. solicit and accept gifts, grants, loans, and other aids from any
9 source or participate in any other way in any government program to
10 carry out the purposes of this act;
- 11 k. require a reasonable length of State residence for qualified
12 beneficiaries, as appropriate;
- 13 l. reasonably restrict the number of participants in the county
14 college plan and the university plan according to criteria developed by
15 the board. A person denied participation solely on the basis of this
16 restriction shall be granted priority for participation during the
17 succeeding year;
- 18 m. segregate contributions and payments to the fund into various
19 accounts;
- 20 n. ¹[require and collect] establish reasonable¹ administrative fees
21 in connection with any transaction and impose reasonable penalties,
22 including default, for delinquent payments or for entering into an
23 advance payment contract on a fraudulent basis;
- 24 o. procure insurance against any loss in connection with the
25 property, assets and activities of the fund or the board;
- 26 p. provide for the receipt of contributions in lump sums or
27 installment payments;
- 28 q. impose reasonable ¹[time] ¹limits on ~~use of the tuition~~
29 benefits provided by the program the length of time within which a
30 qualified beneficiary shall be required to begin to exercise benefits
31 under the program. The board shall also determine whether to impose
32 limits on the total amount of time that the qualified beneficiary is
33 permitted to exercise the benefits under the program¹ ;
- 34 r. delineate the terms under which payments may be withdrawn
35 from the fund and impose reasonable fees and charges for withdrawals;
- 36 s. define for the purposes of this act the ¹[average] maximum¹
37 number of ²credit² hours ²[required for the conferral of] which may
38 be purchased under the program for² an associate degree; the
39 ¹[average] maximum¹ number of ²credit² hours ²[required for the
40 conferral of] which may be purchased under the program for² a
41 baccalaureate degree; the average current and projected tuition within
42 the county college system and the average current and projected
43 tuition of the four-year public institutions of higher education ²utilized
44 to limit the contractual obligations of the board to qualified
45 beneficiaries²;
- 46 ³[t. determine whether the New Jersey Better Educational Savings

1 Trust (NJBEST) Program established pursuant to N.J.S.18A:71B-35
2 through N.J.S.18A:71B-46 and the New Jersey Prepaid Higher
3 Education Expense Program should be marketed by a single private
4 entity and whether a single private entity should manage both
5 programs on behalf of the board;]³

6 ³[u.] t.³ adopt rules and regulations to implement this act; and
7 ³[v.] u.³ take all actions required so that the program is treated
8 as a qualified State tuition program under section 529 of the federal
9 Internal Revenue Code of 1986, 26 U.S.C.s.529.

10

11 8. (New section) a. The board, acting with the approval of the
12 State Investment Council in the Division of Investment, shall establish
13 a comprehensive investment plan for the purposes of this act and
14 annually review the plan to assure that the program remains actuarially
15 sound. The comprehensive investment plan shall specify the
16 investment policies to be utilized by the board in its administration of
17 the fund. The board may place assets of the fund in savings accounts
18 or use the funds to purchase fixed or variable life insurance or annuity
19 contracts, securities, evidence of indebtedness or other investment
20 products, pursuant to the comprehensive investment plan and in such
21 proportions as may be designated or approved under that plan. The
22 board shall be subject to the "prudent person" standard of care
23 applicable to the Division of Investment in the Department of the
24 Treasury pursuant to subsection b. of section 11 of P.L.1950, c.270
25 (C.52:18A-89). The insurance, annuity, savings or investment
26 products shall be underwritten and offered in compliance with the
27 applicable federal and State laws and regulations and by persons who
28 are duly authorized by applicable federal and State authorities.

29 b. The board may delegate responsibility for administration of the
30 ¹[comprehensive investment plan required pursuant to subsection a.
31 of this section] program¹ to a person the board determines to be
32 qualified. Directly or through the person, the board may contract, in
33 accordance with the provisions of P.L.1954, c.48 (C.52:34-6 et seq.),
34 with a private corporation or institution ¹authorized to do business in
35 this State¹ to provide such services as may be a part of the
36 ¹[comprehensive investment plan] program¹ or as may be deemed
37 necessary for implementation of the ¹[comprehensive investment plan]
38 program¹, including, but not limited to, providing consolidated billing,
39 individual and collective record keeping and accounting, ¹[and]¹ asset
40 purchase, control and safekeeping ¹, investment management,
41 marketing, administration, program operations, and other services
42 deemed necessary and proper to carry out the purposes of this act. ³In
43 the event that the board delegates a private entity as the investment
44 manager, the assets of the fund shall be invested in accordance with an
45 investment plan approved by the State Investment Council in the
46 Division of Investment.³

1 The board shall determine whether the services deemed necessary
2 and proper to carry out the purposes of this act shall be provided by
3 a single or multiple entities¹.

4 c. The board shall annually prepare or cause to be prepared a
5 report setting forth in appropriate detail an accounting of the fund and
6 a description of the financial condition of the program at the close of
7 each fiscal year. The report shall be submitted to the Governor, the
8 President of the Senate, the Speaker of the General Assembly, the
9 State Treasurer, the executive director of the New Jersey Commission
10 on Higher Education and the executive director of the Higher
11 Education Student Assistance Authority on or before August 1 each
12 year. In addition, the board shall make the report available to
13 purchasers of advance payment contracts. The board shall provide to
14 the Commission on Higher Education by August 1 each year complete
15 advance payment contract sales information, including projected
16 higher education enrollments of qualified beneficiaries.

17 d. The accounts of the funds shall be subject to annual audits by
18 the State Auditor or a designee. In addition, the board shall
19 commission an annual independent audit of the program. The results
20 of the independent audit shall be provided to the Governor, the
21 President of the Senate, the Speaker of the General Assembly, the
22 State Treasurer, the executive director of the New Jersey Commission
23 on Higher Education and the executive director of the Higher
24 Education Student Assistance Authority. If the board delegates
25 responsibility for the administration of the comprehensive investment
26 plan pursuant to subsection b. of this section, the cost of the
27 independent audit shall be borne by that person.

28 e. The board may make available insurance coverage written
29 exclusively for the purpose of protecting advance payment contracts,
30 and the purchasers or beneficiaries thereof, which may be issued in the
31 form of a group term life policy to purchasers of advance payment
32 contracts.

33 f. ¹[The board may solicit proposals for the marketing of the
34 program or may delegate this responsibility to the person who is
35 administering the comprehensive investment plan pursuant to
36 subsection b. of this section. The entity designated pursuant to this
37 subsection shall serve as a centralized marketing agent for the program
38 and shall be solely responsible for the marketing of the program.]¹
39 Materials produced for the purpose of marketing the program shall be
40 submitted to the board for review and approval. Marketing materials
41 shall not be made available or distributed to the public prior to the
42 materials being approved by the board. An institution of higher
43 education may distribute marketing materials produced for the
44 program. The State and the board shall not be liable for
45 misrepresentation of the program by a marketing agent.

46 ¹[A single entity may be selected to market both the New Jersey

1 Prepaid Higher Education Expense Program and the New Jersey
2 Better Educational Savings Trust (NJBEST) Program established
3 pursuant to N.J.S.18A:71B-35 through N.J.S.18A:71B-46.

4 Nothing in this subsection shall preclude the person who is
5 administering the comprehensive investment plan pursuant to
6 subsection b. of this section from marketing both the New Jersey
7 Prepaid Higher Education Expense Program and the New Jersey
8 Better Educational Savings Trust (NJBEST) Program established
9 pursuant to N.J.S.18A:71B-35 through N.J.S.18A:71B-46.]¹

10 g. Statements, reports on distributions and information returns
11 relating to accounts shall be prepared, distributed, and filed to the
12 extent required by section 529 of the federal Internal Revenue Code
13 of 1986, 26 U.S.C. s.529.

14
15 9. (New section) a. The board shall develop an advance payment
16 contract with the assistance of the Office of the Attorney General. An
17 advance payment contract shall be exempt from the provisions of
18 Subtitle 3 of Title 17 of the Revised Statutes and Subtitle 3 of Title
19 17B of the New Jersey Statutes. The contents of the contract shall
20 include, but not be limited to, the following:

21 (1) the amount of the payments and the number of payments
22 required from a purchaser;

23 (2) the terms and conditions under which purchasers are required
24 to remit payments, including, but not limited to, the date or dates upon
25 which each payment is due;

26 (3) provisions for late payment charges and for default;

27 (4) provisions for penalty fees for withdrawals from the fund;

28 (5) the name and date of birth of the qualified beneficiary on
29 whose behalf the contract is drawn and the terms and conditions under
30 which another person may be substituted as the qualified beneficiary;

31 (6) the name of any person who may cancel the contract. The
32 terms of the contract shall specify whether the contract may be
33 canceled by the purchaser, the qualified beneficiary, a specific
34 designated person or any combination of these persons;

35 (7) the terms and conditions under which a contract may be
36 canceled, the name of the person entitled to any refund due as a result
37 of the cancellation of the contract pursuant to those terms and
38 conditions, and the method for determining the amount of refund;

39 (8) the time limitations, if any, within which the qualified
40 beneficiary is required to claim benefits through the program. If time
41 limitations are included in the contract, the time expended by a
42 qualified beneficiary as an active duty member of any of the armed
43 services of the United States shall be added to the period of time
44 permitted to exercise the benefits;

45 ¹(9) the terms and conditions, if any, under which a purchaser may
46 designate another individual as a successor owner of the contract; ¹and

1 ¹[(9)] (10)¹ other terms and conditions deemed by the board to
2 be necessary or proper.

3 b. In addition to the provisions of subsection a. of this section an
4 advance payment contract shall include the following:

5 (1) the number of credit hours contracted by the purchaser;

6 (2) the plan toward which the credit hours shall be applied;

7 (3) the assumption of a contractual obligation by the board to the
8 qualified beneficiary to provide for a specified number of credit hours
9 of undergraduate instruction at a public institution of higher education,
10 not to exceed the ²[average] maximum² number of credit hours
11 ²[required for the conferral of the degree that corresponds to the plan
12 purchased on behalf of the qualified beneficiary] which may be
13 purchased under the program for the associate degree or the
14 baccalaureate degree, as appropriate² .

15

16 10. (New section) a. At a minimum, the board shall make
17 advance payment contracts available for two independent plans to be
18 known as the county college plan and the university plan.

19 (1) Through the county college plan, the advance payment
20 contract shall provide prepaid tuition for a specified number of
21 undergraduate credit hours not to exceed the ¹[average] maximum¹
22 number of ²credit² hours ²[required for the conferral of] which may
23 be purchased under the program for² an associate degree. The cost of
24 participation in the county college plan shall be based primarily on the
25 average current and projected tuition within the county college system
26 and the number of years expected to elapse between the purchase of
27 the plan on behalf of a qualified beneficiary and the exercise of the
28 benefits provided in the plan by the qualified beneficiary. Qualified
29 beneficiaries shall bear the cost of any laboratory fees associated with
30 enrollment in specific courses. ¹In the event that a qualified beneficiary
31 chooses to attend a four-year public institution of higher education,
32 the qualified beneficiary may convert the maximum number of credit
33 hours ²[required for the conferral of] which may be purchased under
34 the program for² an associate degree from a county college plan to a
35 university plan.¹ Each qualified beneficiary shall be classified as² [a]
36 an in-county² resident for tuition purposes regardless of his actual
37 legal residence ¹during the period in which benefits under the program
38 are being utilized.¹

39 (2) Through the university plan, the advance payment contract
40 shall provide prepaid tuition for a specified number of undergraduate
41 credit hours not to exceed the ¹[average] maximum¹ number of
42 ²credit² hours ²[required for the conferral of] which may be
43 purchased under the program for² a baccalaureate degree. The cost
44 of participation in the university plan shall be based primarily on the
45 average current and projected tuition of the four-year public

1 institutions of higher education and the number of years expected to
2 elapse between the purchase of the plan on behalf of a qualified
3 beneficiary and the exercise of the benefits provided in the plan by the
4 beneficiary. Qualified beneficiaries shall bear the cost of any
5 laboratory fees associated with enrollment in specific courses. In the
6 event that a qualified beneficiary fails to be admitted to a four-year
7 public institution of higher education or chooses to attend a county
8 college, the qualified beneficiary may convert the ¹[average]
9 maximum¹ number of credit hours ²[required for the conferral of]
10 which may be purchased under the program for² an associate degree
11 from a university plan to a county college plan and may retain the
12 remaining credit hours in the university plan or may request a refund
13 for prepaid credit hours in excess of the ¹[average] maximum¹
14 number of credit hours ²[required for the conferral of] which may be
15 purchased under the program for² an associate degree. ²A refund may
16 also be requested for the difference in the cost of credit hours under
17 the university plan and the county college plan for the number of credit
18 hours converted to the county college plan.² Each qualified
19 beneficiary shall be classified as a resident for tuition purposes
20 regardless of his actual legal residence ¹ during the period in which
21 benefits under the program are being utilized¹.

22 b. In addition to the plans required pursuant to subsection a. of
23 this section, the board may make advance payment contracts available
24 for other plans, such as the county college plus university plan
25 whereby the advance payment contract would provide tuition that
26 would allow a qualified beneficiary to attend a county college for an
27 associate degree and then attend a four-year public institution of
28 higher education for a baccalaureate degree.

29 c. The board shall establish procedures for conversions between
30 plans established under the program. The procedures shall include, but
31 not be limited to, the conditions under which a conversion may occur
32 and the method for calculating any refund due.

33 d. A qualified beneficiary may apply a county college plan or a
34 university plan toward any eligible independent institution of higher
35 education. The board shall transfer or cause to have transferred to the
36 eligible independent institution of higher education designated by the
37 qualified beneficiary an amount not to exceed the weighted average
38 tuition purchased under the advance payment contract. In the event
39 that the cost of tuition at the eligible independent institution of higher
40 education is less than the weighted average tuition purchased under
41 the advance payment contract, the amount transferred shall not exceed
42 the actual cost of tuition. A transfer authorized pursuant to this
43 subsection shall not exceed the number of credit hours contracted on
44 behalf of a qualified beneficiary.

45 e. A qualified beneficiary may apply the benefits of an advance
46 payment contract toward an eligible out-of-state institution of higher

1 education. Institutional eligibility for out-of-state institutions of
2 higher education shall be determined by the board, but in making
3 those determinations the board shall recognize that the benefits may
4 only be used at an out-of-state institution of higher education whose
5 students are eligible to receive benefits under section 529 of the
6 federal Internal Revenue Code of 1986, 26 U.S.C. s.529. The board
7 shall transfer or cause to have transferred to the eligible out-of-state
8 institution of higher education designated by the qualified beneficiary
9 an amount not to exceed the weighted average tuition purchased under
10 the advance payment contract. In the event that the cost of tuition at
11 the eligible out-of-state institution of higher education is less than the
12 weighted average tuition purchased under the advance payment
13 contract, the amount transferred shall not exceed the actual cost of
14 tuition. A transfer authorized pursuant to this subsection shall not
15 exceed the number of credit hours contracted on behalf of a qualified
16 beneficiary.

17

18 11. (New section) a. The board shall determine the conditions
19 under which refunds are payable under the program. Unless
20 authorized by the board or under the provisions of this section, a
21 refund shall not exceed the amount paid into the fund by the
22 purchaser. A refund may exceed the amount paid into the fund in the
23 following circumstances:

24 (1) if the qualified beneficiary is awarded a scholarship (or
25 allowance or payment described in subparagraph (B) or (C) of
26 paragraph (1) of subsection (d) of section 135 of the federal Internal
27 Revenue Code of 1986, 26 U.S.C. s.135), the terms of which cover
28 the benefits included in the advance payment contracts, moneys paid
29 for the purchase of the advance payment contracts ¹[shall] may¹ be
30 returned to the purchaser in enrollment period installments coinciding
31 with the matriculation by the qualified beneficiary in amounts equal to
32 the lesser of the original purchase price plus 5% interest compounded
33 annually, or the weighted average tuition purchased under the advance
34 payment contract; and

35 (2) in the event of the death or disability of the qualified
36 beneficiary, moneys paid for the purchase of advance payment
37 contracts shall be returned to the purchaser together with 5% interest
38 compounded annually.

39 b. A refund shall not be authorized through an advance payment
40 contract for any school year partially attended but not completed. For
41 purposes of this subsection, a school year partially attended but not
42 completed means any one enrollment period whereby the student is
43 still enrolled at the conclusion of the official drop-add period, but
44 withdraws before the end of the enrollment period.

45 c. If a qualified beneficiary does not complete a county college
46 plan or university plan, for reasons other than specified in subsection

1 a. of this section, the purchaser shall receive a refund of the amount
2 paid into the fund for the remaining unattended years of the advance
3 payment contract pursuant to rules promulgated by the board and in
4 accordance with the provisions of section 529 of the federal Internal
5 Revenue Code of 1986, 26 U.S.C. s.529.

6
7 12. (New section) Moneys paid into or out of the fund by or on
8 behalf of a purchaser or qualified beneficiary of an advance payment
9 contract for the purposes of financing the cost of qualified higher
10 education expenses under the program are exempt from all claims of
11 creditors of the purchaser or the beneficiary.

12
13 13. (New section) The State or any State agency, county,
14 municipality, or other political subdivision may, by contract or
15 collective bargaining agreement, agree with any employee to remit
16 payments toward advance payment contracts through payroll
17 deductions made by the appropriate officer or officers of the State,
18 State agency, county, municipality, or political subdivision. The
19 payments shall be held and administered in accordance with this act.

20
21 14. (New section) ³[In] If the investment manager is the Division
22 of Investment in the Department of the Treasury, in³ order to meet the
23 obligations of the board under this act, there shall be paid to the board
24 for deposit in the fund, at the time of distribution, subject to
25 appropriation, such sum, if any, as shall be certified by the chair of the
26 board as necessary to provide that amount at the time of distribution.
27 The chair shall make and deliver to the Governor, or his designee, the
28 certificate stating the sums, if any, required to make available in the
29 fund the amount aforesaid, and the sums so certified shall be
30 appropriated and paid to the board during the then current State fiscal
31 year.

32
33 15. (New section) In the event that the State Treasurer
34 determines the program to be financially infeasible, the State may
35 discontinue the provision of the program. A qualified beneficiary who
36 has been accepted by and is enrolled or is within five years of
37 enrollment in an institution of higher education shall be entitled to
38 exercise the benefits for which he has contracted. All other contract
39 holders shall receive a refund of the amount paid into the fund ¹[, plus
40 interest at the prevailing rate]¹.

41
42 16. (New section) a. A qualified beneficiary who graduates from
43 high school with a 3.0 cumulative grade point average on a 4.0 scale
44 in an academic program or a 3.2 cumulative grade point average on a
45 4.0 scale in a vocational-educational program, based upon grades in
46 core curriculum content subject areas as determined by the board, or

1 who graduates in the top 15% of his high school graduating class shall
2 be admitted to a public institution of higher education. In order to be
3 admitted to a public institution of higher education pursuant to this
4 section, the qualified beneficiary shall meet all of the institution's
5 requirements for admittance. This provision shall not be construed to
6 promise or guarantee that a qualified beneficiary shall be admitted to
7 a particular public institution of higher education.

8 b. In order to effectuate the provisions of subsection a. of this
9 section, the board, in consultation with the Commission on Higher
10 Education, shall develop a process to assist qualified beneficiaries in
11 applying to all public institutions of higher education.

12
13 ³[17. (New section) Moneys paid into or out of an account by or
14 on behalf of a contributor or designated beneficiary for the purposes
15 of financing the cost of qualified higher education expenses under the
16 New Jersey Better Educational Savings Trust (NJBEST) Program, are
17 exempt from all claims of creditors of the contributor or the
18 designated beneficiary.]³

19
20 ³[18. N.J.S.18A:71B-36 is amended to read as follows:

21 18A:71B-36. As used in this article:

22 "Account" means an individual trust account or savings account
23 established in accordance with this article;

24 ["Authority" means the Higher Education Student Assistance
25 Authority;]

26 "Board" means the ²NJBEST and ² Prepaid Higher Education
27 Expense Board established pursuant to section 6 of P.L. _____, c.
28 (C. _____) (now pending before the Legislature as this bill).

29 "Contributor" means the person or organization contributing to and
30 maintaining an account and having the right to withdraw funds from
31 the account before the account is disbursed to or for the benefit of the
32 designated beneficiary;

33 "Designated beneficiary" means: a. the individual designated at the
34 time the account is opened as the individual whose higher education
35 expenses are expected to be paid from the account; b. the replacement
36 beneficiary if the change in designated beneficiary would not result in
37 a distribution that is included in federal gross income under section
38 529 of the federal Internal Revenue Code of 1986, 26 U.S.C.s.529;
39 and c. in the case of an interest in the program purchased by a state or
40 local government or an organization described in paragraph (3) of
41 subsection (c) of section 501 of the federal Internal Revenue Code of
42 1986, 26 U.S.C.s.501 and exempt from taxation under subsection (a)
43 of section 501 of the federal Internal Revenue Code of 1986, 26
44 U.S.C.s.501, as a part of a scholarship program operated by the
45 government or organization, the individual receiving the interest as a
46 scholarship;

47 "Higher education institution" means an eligible educational

1 institution as defined in or for purposes of section 529 of the federal
2 Internal Revenue Code of 1986, 26 U.S.C.s.529. Higher education
3 institution shall include a proprietary institution if expenses for tuition
4 at the institution would be considered qualified higher education
5 expenses under section 529 of the federal Internal Revenue Code of
6 1986, 26 U.S.C.s.529, but only for degree granting programs licensed
7 or approved by the Commission on Higher Education or for other
8 proprietary institutions as determined by the [authority] board;

9 "Investment Manager" means the Division of Investment in the
10 Department of the Treasury or the private entities authorized to do
11 business in this State that may be designated by the [authority] board
12 to invest the funds of the trust pursuant to the terms of this article;

13 "Member of the family" means a member of the family as defined in
14 or for purposes of section 529 of the federal Internal Revenue Code
15 of 1986, 26 U.S.C.s.529;

16 "Nonqualified withdrawal" means a withdrawal from an account
17 other than: a. a qualified withdrawal; b. a withdrawal made as the
18 result of the death or disability of the designated beneficiary of an
19 account; c. a withdrawal made on account of a scholarship (or
20 allowance or payment described in subparagraph (B) or (C) of
21 paragraph (1) of subsection (d) of section 135 of the federal Internal
22 Revenue Code of 1986, 26 U.S.C.s.135) received by the designated
23 beneficiary, but only to the extent of the amount of that scholarship,
24 allowance or payment; d. a rollover or change in designated
25 beneficiary which would not result in a distribution includible in
26 federal gross income under section 529 of the federal Internal Revenue
27 Code of 1986, 26 U.S.C.s.529; or e. any other withdrawal if the failure
28 of the program to impose a more than de minimis penalty on the
29 withdrawal would cause the program not to be a qualified State tuition
30 program under section 529 of the federal Internal Revenue Code of
31 1986, 26 U.S.C.s.529;

32 "Program" means the "New Jersey Better Educational Savings Trust
33 (NJBEST) Program" established pursuant to this article;

34 "Qualified higher education expenses" means expenses described in
35 paragraph (3) of subsection (e) of section 529 of the federal Internal
36 Revenue Code of 1986, 26 U.S.C.s.529 incurred in connection with
37 the enrollment of a designated beneficiary at a higher education
38 institution;

39 "Qualified withdrawal" means a withdrawal from an account to pay
40 the qualified higher education expenses of the designated beneficiary
41 of the account; but a withdrawal shall not be considered a qualified
42 withdrawal if the failure of the program to impose a more than de
43 minimis penalty on the withdrawal would cause the program not to
44 qualify as a qualified State tuition program under section 529 of the
45 federal Internal Revenue Code of 1986, U.S.C.s.529;

46 "Trust" means the "New Jersey Better Educational Savings Trust"
47 established pursuant to N.J.S.18A:71B-37.
48 (cf: N.J.S.18A:71B-36)]³

1 ³[19. N.J.S.18A:71B-37 is amended to read as follows:

2 18A:71B-37. There is created within the [Higher Education
3 Student Assistance Authority] ²NJBEST and² Prepaid Higher
4 Education Expense Board the New Jersey Better Educational Savings
5 Trust (NJBEST). The trust shall provide a mechanism through which
6 the [authority] board, as trustee, holds accounts established and
7 maintained pursuant to the provisions of this article to finance the cost
8 of qualified higher education expenses.

9 (cf: N.J.S.18A:71B-37)]³

10

11 ³[20. N.J.S.18A:71B-38 is amended to read as follows:

12 18A:71B-38. The [Higher Education Student Assistance Authority]
13 ²NJBEST and² Prepaid Higher Education Expense Board established
14 pursuant to section 6 of P.L. , c. (C.)(now pending before the
15 Legislature as this bill) shall administer the NJBEST Program. The
16 [authority] board shall have the power to:

17 a. serve as trustee of the trust;

18 b. adopt rules and regulations pursuant to the "Administrative
19 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), necessary to
20 carry out the provisions of this article;

21 c. prescribe and provide appropriate forms for participation in the
22 program;

23 d. select an investment manager and any other contractors needed
24 to manage and market the program;

25 e. monitor the investment manager and any other contractors by
26 audits and other reports;

27 f. collect reasonable administrative fees in connection with any
28 contract or transaction relating to the program;

29 g. impose penalties for nonqualified withdrawals;

30 h. take all actions required so that the program is treated as a
31 qualified State tuition program under section 529 of the federal
32 Internal Revenue Code of 1986, 26 U.S.C.s.529; and

33 i. perform any other acts which may be deemed necessary or
34 appropriate to carry out the objects and purposes of this article.

35 (cf: N.J.S.18A:71B-38)]³

36

37 ³[21. N.J.S.18A:71B-39 is amended to read as follows:

38 18A:71B-39. Neither the members of the [authority] board, nor
39 any officer or employee of the [authority] board shall be liable
40 personally for the debts, liabilities or obligations of the program
41 established pursuant to this article.

42 (cf: N.J.S.18A:71B-39)]³

43

44 ³17. (New Section) a. Nothing in this article shall be construed to
45 guarantee that a qualified beneficiary will be admitted to a particular
46 higher education institution or be allowed to continue enrollment at or

1 graduate from a higher education institution after admission.

2 b. Nothing in this article shall establish any obligation or liability on
3 the part of this State or any agency or instrumentality of this State
4 with respect to any federal or State tax liability of any contributor or
5 designated beneficiary in this program.

6 c. Under regulations promulgated by the board, every contract and
7 application that may be used in connection with the program shall
8 clearly indicate that the contract is not insured by this State, other than
9 as set forth in sections 14 and 15 of P.L. , c. (C.)(now pending
10 before the Legislature as this bill).³

11

12 ³[22.] 18.³ N.J.S.18A:71B-40 is amended to read as follows:

13 18A:71B-40. a. The [authority] ³[board] authority³ shall select
14 an investment manager or managers to invest the funds of the trust or
15 the funds in accounts. In making this selection, any investment
16 manager shall be subject to the "prudent person" standard of care
17 applicable to the Division of Investment in the Department of the
18 Treasury pursuant to subsection b. of section 11 of P.L.1950, c.270
19 (C.52:18A-89), and the [authority] ³[board] authority³ shall consider
20 the impact of fees and costs imposed by the manager or managers on
21 yield to contributors.

22 b. The [authority] ³[board] authority³ may select more than one
23 investment manager and investment instrument for the program if it is
24 in the best interest of contributors and will not interfere with the
25 administration of the program.

26 c. The [authority] ³[board] authority³ may provide a contributor
27 with a choice of investment managers or investment instruments or
28 both for the program if both of the following conditions exist:

29 (1) the federal Internal Revenue Service has provided guidance that
30 providing a contributor with a choice of investment managers or
31 instruments under a State tuition program will not cause the program
32 to fail to qualify for favorable tax treatment under section 529 of the
33 federal Internal Revenue Code of 1986, 26 U.S.C.s.529; and

34 (2) the [authority] ³[board] authority³ concludes that a choice of
35 investment managers or of investment instruments is in the best
36 interest of contributors and will not interfere with the administration
37 of the program.

38 d. If the [authority] ³[board] authority³ terminates the designation
39 of an investment manager to hold accounts, and accounts must be
40 moved from that investment manager to another investment manager,
41 the [authority] ³[board] authority³ shall select the investment
42 manager and type of investment instrument to which the balance of the
43 account is moved, unless the federal Internal Revenue Service provides
44 guidance that allowing the contributor to select among several
45 investment managers or investment instruments that have been selected
46 by the [authority] ³[board] authority³ would not cause a program to

1 cease to be a qualified State tuition program for the purposes of
2 section 529 of the federal Internal Revenue Code, 26 U.S.C.s.529.

3 e. ³[The board, upon the effective date of P.L. _____, c. _____
4 (C. _____)(now pending before the Legislature as this bill) and in
5 accordance with the provisions of P.L.1954, c.48 (C.52:34-6 et seq.),
6 shall select an investment manager or managers for the program.]³ If
7 the selection process provided for in this ³[subsection] section³
8 results in an investment manager other than the Division of
9 Investment, the ³[board] authority³ shall provide for the orderly
10 transfer of accounts and shall ensure that all the rights of the
11 contributors and designated beneficiaries participating in the program
12 as of the effective date of P.L. _____, c. _____ (C. _____)(now pending before
13 the Legislature as this bill), are protected.
14 (cf: N.J.S.18A:71B-40)

15

16 ³[23. N.J.S.18A:71B-41 is amended to read as follows:

17 18A:71B-41. a. The program shall be operated as a trust through
18 the use of accounts for designated beneficiaries. An account may be
19 opened by any person who desires to save to pay the qualified higher
20 education expenses of an individual by satisfying each of the following
21 requirements:

22 (1) completing an application in the form prescribed by the
23 [authority] board;

24 (2) paying the one-time application fee established by the
25 [authority] board;

26 (3) making the minimum contribution required by the [authority]
27 board for opening an account;

28 (4) designating the account or accounts to be opened; and

29 (5) in the case of an account to which subsection a. of
30 N.J.S.A.18A:71B-44 would apply, demonstrating to the satisfaction
31 of the [authority] board that either the contributor, if an individual, or
32 the designated beneficiary is a New Jersey resident. The requirement
33 of New Jersey residency for either the contributor or the designated
34 beneficiary would not apply to an account to which subsection b. of
35 N.J.S.18A:71B-44 would apply unless otherwise determined by the
36 [authority] board.

37 b. Except as provided under N.J.S.18A:71B-42, only the
38 contributor may make contributions to an account after the account is
39 opened.

40 c. Contributions to accounts shall be made only in cash, as defined
41 by the [authority] board pursuant to regulations, in accordance with
42 section 529 of the federal Internal Revenue Code of 1986, 26
43 U.S.C.s.529.

44 d. Contributors may withdraw all or part of the balance from an
45 account on sixty days' notice or a shorter period, as may be authorized
46 by the [authority] board pursuant to regulations.

1 e. A contributor may change the designated beneficiary of an
2 account or rollover all or a portion of an account to another account
3 if the change or rollover would not result in a distribution includible
4 in gross income under section 529 of the federal Internal Revenue
5 Code of 1986, 26 U.S.C.s.529, in accordance with procedures
6 established by the [authority] board.

7 f. In the case of any nonqualified withdrawal, a penalty at a level
8 established by the [authority] board and sufficient to be considered a
9 more than de minimis penalty for purposes of section 529 of the
10 federal Internal Revenue Code of 1986, 26 U.S.C.s.529, shall be
11 withheld and paid to the [authority] board for use in operating and
12 marketing the program. The [authority] board may elect not to
13 impose a penalty if that section ceases to include a provision requiring
14 more than de minimis penalties for a program to qualify as a qualified
15 State tuition program.

16 g. If a contributor makes a nonqualified withdrawal and a penalty
17 amount is not withheld pursuant to subsection f. of this section or the
18 amount withheld is less than the amount required to be withheld under
19 that subsection, the contributor shall pay the unpaid portion of the
20 penalty to the [authority] board at the same time that the contributor
21 files a State income tax return for the taxable year of the withdrawal,
22 or if the contributor does not file a return, the unpaid portion of the
23 penalty shall be paid on or before the due date for the filing of that
24 income tax return.

25 h. Each account shall be maintained separately from each other
26 account under the program.

27 i. Separate records and accounting shall be maintained for each
28 account for each designated beneficiary.

29 j. A contributor to or designated beneficiary of any account shall
30 not direct the investment of any contributions to an account or the
31 earnings from the account, except as permitted under section 529 of
32 the federal Internal Revenue Code of 1986, 26 U.S.C.s.529.

33 k. A contributor or a designated beneficiary shall not use an
34 interest in an account as security for a loan. Any pledge of an interest
35 in an account is of no force and effect.

36 l. The maximum contribution for any designated beneficiary shall
37 be determined by the [authority] board pursuant to regulations, in
38 accordance with section 529 of the federal Internal Revenue Code of
39 1986, 26 U.S.C.s.529.

40 m. Statements, reports on distributions and information returns
41 relating to accounts shall be prepared, distributed, and filed to the
42 extent required by section 529 of the federal Internal Revenue Code
43 of 1986, 26 U.S.C.s.529, or regulations issued thereunder.

44 n. The [authority] board may charge, impose and collect
45 reasonable administrative fees and service charges in connection with
46 any agreement, contract or transaction relating to the program. These

1 fees and charges may be imposed directly on contributors or may be
2 taken as a percentage of the investment earnings on accounts.

3 o. The State or any State agency, municipality, or other political
4 subdivision may, by contract or collective bargaining agreement, agree
5 with any employee to remit contributions to accounts through payroll
6 deductions made by the appropriate officer or officers of the State,
7 State agency, county, municipality, or political subdivision. The
8 contributions shall be held and administered in accordance with this
9 act.

10 (cf: N.J.S.18A:71B-41)]³

11

12 ³[24. N.J.S.18A:71B-42 is amended to read as follows:

13 18A:71B-42. a. An amount of no less than \$500 shall be provided
14 by the State for the qualified higher education expenses of a
15 designated beneficiary at the time of a qualified withdrawal provided
16 that:

17 (1) the contributor demonstrates, to the satisfaction of the
18 [authority] board, that the contributor participated in the program for
19 at least four years by making a qualifying minimum initial deposit or
20 qualifying minimum annual contributions, or both, as shall be
21 determined by the [authority] board, for a designated beneficiary;

22 (2) the designated beneficiary demonstrates, to the satisfaction of
23 the [authority] board, attendance or enrollment in a higher education
24 institution in this State, at the time of initial attendance or enrollment
25 in the higher education institution; and

26 (3) either the contributor, if an individual, or the designated
27 beneficiary demonstrates, to the satisfaction of the [authority] board,
28 that the contributor or designated beneficiary is a New Jersey resident.

29 b. The amount provided under subsection a. of this section shall
30 meet the requirements of a qualified scholarship within the meaning of
31 section 117 of the federal Internal Revenue Code of 1986,
32 26 U.S.C.s.117, for a designated beneficiary satisfying the
33 requirements of subsection a. of this section.

34 c. A designated beneficiary shall not receive more than one State
35 scholarship provided pursuant to subsection a. of this section.

36 (cf: N.J.S.18A:71B-42)]³

37

38 ³[25. N.J.S.18A:71B-43 is amended to read as follows:

39 18A:71B-43. Annually, the [authority] board shall determine a
40 dollar amount of an account, which shall not be less than \$25,000,
41 which shall not be considered in evaluating the financial needs of a
42 student enrolled in an institution of higher education located in the
43 State of New Jersey, or be deemed a financial resource or a form of
44 financial aid or assistance to a student, for purposes of determining the
45 eligibility of a student for any scholarship, grant, or monetary
46 assistance awarded by the State; nor shall the amount of any account

1 as determined by the [authority] board provided for a designated
2 beneficiary under this article reduce the amount of any scholarship
3 grant or monetary assistance which the student is entitled to be
4 awarded by the State.

5 (cf: N.J.S.18A:71B-43)]³

6

7 ³[26.] 19.³ N.J.S.18A:71B-44 is amended to read as follows:

8 18A:71B-44. a. If the investment manager is the Division of
9 Investment in the Department of the Treasury, in order to assure the
10 availability of principal of any amount contributed under this article,
11 there shall be paid to the [authority] ³[board] authority³ for deposit
12 in the trust, at the time of distribution, subject to appropriation, such
13 sum, if any, as shall be certified by the [chairperson] chair of the
14 [authority] ³[board] authority³ as necessary to provide that amount
15 at the time of distribution. The [chairperson] chair shall make and
16 deliver to the Governor, or his designee, the certificate stating the
17 sums, if any, required to make available in the trust the amount
18 aforesaid, and the sums so certified shall be appropriated and paid to
19 the [authority] ³[board] authority ³during the then current State
20 fiscal year.

21 b. If the investment manager is a private entity, the investment of
22 the principal and interest of any amount contributed under this article
23 shall be ¹[backed by the full faith and credit of the United States or be
24 fully insured by the Federal Deposit Insurance Corporation or other
25 similar insurer backed by the full faith and credit of the United States.
26 No account balance shall exceed the maximum amount of insurance
27 provided by the insurer. No investment is permitted in derivatives of
28 eligible securities, and any investment must be designed to balance
29 prospective payments according to the guidelines established] made
30 in accordance with an investment plan approved by the State
31 Investment Council in the Division of Investment¹.

32 (cf: N.J.S.18A:71B-44)

33

34 ³[27. N.J.S.18A:71B-45 is amended to read as follows:

35 18A:71B-45. a. Nothing in this article shall be construed to:

36 (1) guarantee that a designated beneficiary will be admitted to a
37 higher education institution or be allowed to continue enrollment at or
38 graduate from a higher education institution after admission;

39 (2) establish State residency for a person merely because the person
40 is a designated beneficiary; or

41 (3) guarantee that amounts saved pursuant to the program will be
42 sufficient to cover the qualified higher education expenses of a
43 designated beneficiary.

44 b. Nothing in this article establishes any obligation of this State or
45 any agency or instrumentality of this State to guarantee for the benefit
46 of any contributor or designated beneficiary any of the following:

1 (1) the rate of interest or other return on any account; or

2 (2) the payment of interest or other return on any account.

3 c. Nothing in this article establishes any obligation or liability of
4 this State or any agency or instrumentality of this State with respect
5 to any federal or State tax liability of any contributor or designated
6 beneficiary in this program.

7 d. Under regulations promulgated by the [authority] board, every
8 contract and application that may be used in connection with a
9 contribution to an account shall clearly indicate that the account is not
10 insured by this State nor is the investment return guaranteed by this
11 State.

12 (cf: N.J.S.18A:71B-45)]³

13

14 ³[28. N.J.S.18A:71B-46 is amended to read as follows:

15 18A:71B-46. If the Congress of the United States enacts legislation
16 that exempts educational savings accounts from federal income
17 taxation, sections N.J.S.18A:71B-42 and N.J.S.18A:71B-43 shall
18 apply with respect to such educational savings accounts as if they were
19 accounts established under this act and the beneficiaries of the
20 accounts were designated beneficiaries subject to the approval of the
21 [New Jersey Higher Education Assistance Authority] board.

22 (cf: N.J.S.18A:71B-46)]³

23

24 ³[29. (New section) Regulations adopted by the New Jersey
25 Higher Education Student Assistance Authority pertaining to the New
26 Jersey Better Educational Savings Trust (NJBEST) Program shall
27 continue with full force and effect under the board for a period of one
28 year from the effective date of this act or until amended, continued or
29 repealed by the board pursuant to law.]³

30

31 ³20. (New section) Moneys paid into or out of a NJBEST account
32 by or on behalf of a contributor or designated beneficiary for the
33 purposes of financing the cost of qualified higher education expenses
34 under this article are exempt from all claims of creditors of the
35 contributor or the designated beneficiary.³

36

37 ³[30.] 21.³ Section 13 of P.L..1997, c.237 (C.54A:6-25) is
38 amended to read as follows:

39 13. a. Gross income shall not include earnings on an education
40 individual retirement account or a qualified State tuition program
41 account until the earnings are distributed from the account, at which
42 time they shall be includible in the gross income of the distributee
43 except as provided in this section.

44 b. Gross income shall not include qualified distributions as defined
45 in paragraph (3) of subsection c. of this section.

46 c. For purposes of this section:

1 (1) "Education individual retirement account" means an education
2 retirement account as defined pursuant to paragraph (1) of subsection
3 (b) of section 530 of the federal Internal Revenue Code of 1986,
4 26 U.S.C. s.530.

5 (2) "Qualified State tuition program account" means an account
6 established pursuant to the "New Jersey Better Educational Savings
7 Trust (NJBEST) Program," (N.J.S.18A:71B-35 et seq.) , an account
8 established pursuant to the "New Jersey Prepaid Higher Education
9 Expense Program,"(P.L. , c. (C.))(now pending before the
10 Legislature as this bill) or an account established pursuant to any
11 qualified State tuition program, as defined pursuant to subsection (b)
12 of section 529 of the federal Internal Revenue Code of 1986,
13 26 U.S.C. s.529 or a tuition credit or certificate purchased pursuant to
14 any such program.

15 (3) "Qualified distribution" means any of the following:

16 (a) a distribution from a qualified State tuition program account
17 that is used for qualified higher education expenses as defined pursuant
18 to paragraph (3) of subsection (e) of section 529 of the federal Internal
19 Revenue Code of 1986, 26 U.S.C. s.529;

20 (b) a rollover from one account to another account as described in
21 clause (i) of subparagraph (C) of paragraph (3) of subsection (c) of
22 section 529 or paragraph (5) of subsection (d) of section 530 of the
23 federal Internal Revenue Code of 1986, 26 U.S.C. s.529 or 530;

24 (c) a change in designated beneficiaries of an account as described
25 in clause (ii) of subparagraph (C) of paragraph (3) of subsection (c) of
26 section 529 or paragraph (6) of subsection (d) of section 530 of the
27 federal Internal Revenue Code of 1986, 26 U.S.C. s.529 or 530;

28 d. The portion of a distribution from an education individual
29 retirement account or a qualified State tuition program account that is
30 attributable to earnings shall be determined in accordance with the
31 principles of section 72 of the federal Internal Revenue Code of 1986,
32 26 U.S.C. s.72, as applied for purposes of sections 529 and 530 of the
33 federal Internal Revenue Code of 1986, 26 U.S.C. ss.529 and 530.

34 (cf: P.L.1999, c.116, s.1)

35

36 ³[31.] 22.³ There is appropriated from the General Fund to the
37 ³[²NJBEST and²]³ Prepaid Higher Education Expense Board in, but
38 not of, the Department of State \$250,000 to effectuate the provisions
39 of this act.

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41 ³[32.] 23.³ This act shall take effect immediately.

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46 Establishes New Jersey Prepaid Higher Education Expense Program.

CHAPTER 262

AN ACT establishing a Prepaid Higher Education Expense Program, amending and supplementing Title 18A of the New Jersey Statutes and making an appropriation.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

C.18A:71B-64 Short title.

1. Sections 1 through 17 of this act shall be known and may be cited as the "New Jersey Prepaid Higher Education Expense Program Act of 2001."

C.18A:71B-65 Findings, declarations relative to Prepaid Higher Education Expense Program.

2. The Legislature finds and declares: that educational opportunity at the college and university level is a critical State interest which is linked to the needs of the State to ensure a well-educated work force; that educational opportunity is best ensured through the provision of institutions of higher education which are geographically and financially accessible; that it is in the best interests of this State to adopt and foster mechanisms which will encourage its citizens to engage in the timely financial planning which is necessary to guarantee that students will have the financial resources necessary to pursue a higher education given the annually escalating level of resources which such attendance requires; and that one such mechanism which has proven successful in some other states is the establishment of a program through which a portion of the costs associated with attendance at institutions of higher education may be paid in advance and fixed at a guaranteed level for the duration of undergraduate enrollment.

C.18A:71B-66 Definitions relative to Prepaid Higher Education Expense Program.

3. As used in sections 1 through 17 of this act:

"Advance payment contract" means a contract entered into by the board and a purchaser pursuant to the provisions of this act;

"Board" means the Prepaid Higher Education Expense Board established pursuant to section 6 of this act;

"Eligible independent institution of higher education" means those institutions of higher education incorporated and located in this State, which, by virtue of law or character or license, are nonprofit educational institutions empowered to grant academic degrees and which provide a level of education which is equivalent to the education provided by the State's public institutions of higher education as attested by the receipt of and continuation of regional accreditation by the Middle States Association of Colleges and Schools, and which are eligible to receive State aid under the provisions of the Constitution of the United States and the Constitution of the State of New Jersey and whose students are eligible to receive benefits under section 529 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.529. "Eligible independent institution of higher education" shall include a proprietary institution if expenses for tuition at the institution would be considered qualified higher education expenses under section 529 of the federal Internal Revenue Code of 1986, 26 U.S.C.s.529, but only for degree granting programs licensed or approved by the Commission on Higher Education or for other proprietary institutions as determined by the board. "Eligible independent institution of higher education" does not include any educational institution dedicated primarily to the preparation or training of ministers, priests, rabbis, or other professional persons in the field of religion;

"Fund" means the Prepaid Higher Education Expense Trust Fund established pursuant to section 5 of this act;

"Institution of higher education" means an eligible educational institution as defined in or for purposes of section 529 of the federal Internal Revenue Code of 1986, 26 U.S.C.s.529;

"Program" means the New Jersey Prepaid Higher Education Expense Program established pursuant to section 4 of this act;

"Public institution of higher education" means Rutgers, The State University, the State colleges or universities established pursuant to chapter 64 of Title 18A of the New Jersey Statutes, the New Jersey Institute of Technology, the University of Medicine and Dentistry of New Jersey, the county colleges and any other public university or college now or hereafter established or authorized by State law. A public institution of higher education is an institution whose students are eligible to receive benefits under section 529 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.529;

"Purchaser" means a person who makes or is obligated to make payments in accordance with an advance payment contract;

"Qualified beneficiary" means: a. a resident of this State at the time a purchaser enters into an advance payment contract on behalf of the resident; or b. a nonresident who is the child of a noncustodial parent who is a resident of the State at the time that the noncustodial parent enters into an advance payment contract on behalf of the child;

"Tuition" means the charges imposed by an institution of higher education for enrollment at the institution. The Prepaid Higher Education Expense Board shall determine whether mandatory fees charged by institutions of higher education shall be included in the definition of tuition.

C.18A:71B-67 New Jersey Prepaid Higher Education Expense Program.

4. a. There is established the New Jersey Prepaid Higher Education Expense Program to provide a means for payment of the costs of tuition in advance of enrollment at a public institution of higher education. Moneys remitted in accordance with advance payment contracts shall be combined and invested in a manner that is intended to yield sufficient interest to generate the difference between the prepaid amount and the average in-state tuition costs at public institutions of higher education in the State at the time that the benefits are exercised. The program shall pay to the public institution of higher education at which the qualified beneficiary is enrolled an amount equal to the institution's tuition rate at the time the benefits are exercised.

b. The program shall be administered by the Prepaid Higher Education Expense Board established pursuant to section 6 of this act.

C.18A:71B-68 Prepaid Higher Education Expense Trust Fund.

5. a. There is created within the Prepaid Higher Education Expense Board the Prepaid Higher Education Expense Trust Fund. The fund shall consist of State appropriations, moneys acquired from other governmental or private sources, and moneys remitted in accordance with advance payment contracts. Dividends, interest, and gains accruing to the fund shall increase the total funds available for the program.

b. Any funds associated with contracts for which refunds are due, but have not been claimed, shall increase the total funds available for the program. However, the board shall establish procedures for notifying purchasers of any unclaimed refund and shall establish a time period after which a refund may not be claimed.

c. Any balance contained in the fund at the end of a fiscal year shall remain therein and shall be available for carrying out the purposes of the program.

d. The assets of the fund shall be maintained, invested, and expended solely for the purposes of this act and shall not be loaned, transferred, or otherwise used by the State for any purpose other than the purposes of this act. This subsection shall not be construed to prohibit the board from investing in, by purchase or otherwise, bonds, notes or other obligations of the State or an agency or instrumentality of the State.

e. Unless otherwise specified by the board, assets of the fund shall be expended in the following order of priority:

(1) to make payments to institutions of higher education on behalf of qualified beneficiaries;

(2) to make refunds upon cancellation of advance payment contracts; and

(3) to pay the costs of program administration and operations.

f. The board shall administer the fund in a manner that is sufficiently actuarially sound to defray the obligations of the program. The board shall annually evaluate or cause to be evaluated the actuarial soundness of the fund. If the board determines a need for additional assets in order to preserve actuarial soundness, the board may adjust the terms of subsequent advance payment contracts to ensure soundness.

g. If the board finds that a surplus in the fund exists, the board may compensate purchasers of advance payment contracts in a manner that the board determines to be appropriate.

C.18A:71B-69 Prepaid Higher Education Expense Board.

6. a. The Prepaid Higher Education Expense Board is established as a body corporate and politic in the Executive Branch of State Government and for the purposes of complying with the provisions of Article V, Section IV, paragraph 1 of the New Jersey Constitution, the board is allocated in, but not of, the Department of State. Notwithstanding this allocation, the board shall be independent of any supervision or control by the department or by any board or officer thereof.

b. The board shall consist of 11 members, including the State Treasurer or a designee, the executive director of the Commission on Higher Education or a designee, the executive director of the Higher Education Student Assistance Authority or a designee, the chair of the New Jersey Presidents' Council or a designee; and seven members appointed by the Governor without regard for political affiliation, one upon the recommendation of the Speaker of the General Assembly, one upon the recommendation of the Minority Leader of the General Assembly, one upon the recommendation of the President of the Senate, and one upon the recommendation of the Minority Leader of the Senate. Each member appointed by the Governor shall possess knowledge, skill, and experience in the areas of accounting, actuary, risk management or investment management. Members appointed by the Governor shall serve terms of three years, except that in making the initial appointments, the Governor shall appoint two members to serve for one year, two members to serve for two years, and three members to serve for three years. Any member appointed to fill a vacancy on the board shall be appointed in a like manner and shall serve until a successor qualifies. Members of the board shall serve without compensation but shall be reimbursed for any necessary expenses incurred in the performance of their duties.

c. The Governor shall appoint a member of the board to serve as the initial chair of the board. Thereafter, the board shall elect a chair annually. The board shall annually elect a board member to serve as vice-chair and shall designate a secretary-treasurer who need not be a member of the board. The secretary-treasurer shall keep a record of the proceedings of the board and shall be the custodian of all printed material filed with or by the board and of its official seal. Notwithstanding the existence of vacancies on the board, a majority of the members shall constitute a quorum. The board shall take no official action in the absence of a quorum. The board shall meet, at a minimum, on a quarterly basis at the call of the chair.

d. Neither the members of the board, nor any officer or employee of the board shall be liable personally for the debts, liabilities or obligations of the program established pursuant to this act.

C.18A:71B-70 Powers of the board.

7. The board shall have the powers necessary or proper to carry out the provisions of this act, including, but not limited to, the power to:

a. appoint an executive director to serve as the chief administrative and operational officer of the board and to perform other duties assigned by the board;

b. adopt an official seal and alter the same at pleasure;

c. sue and be sued in its own name;

d. make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers in accordance with the provisions of P.L.1954, c.48 (C.52:34-6 et seq.);

e. purchase, without advertising for bids or after having rejected all bids obtained pursuant to advertising therefor, any materials, supplies, goods, services or equipment pursuant to a contract or contracts for such materials, supplies, goods, services or equipment entered into on behalf of the State by the Division of Purchase and Property;

f. establish agreements or other transactions with federal, State, and local agencies, including institutions of higher education;

g. invest funds not required for immediate disbursement;

h. hold, buy, and sell any instruments, obligations, securities, and property determined appropriate by the board;

i. employ personnel, including financial and computer experts, legal counsel, accountants, managers and auditors, as may be necessary; to fix their compensation; and to promote and discharge the employees and agents; all without regard to the provisions of Title 11A of the New Jersey Statutes;

- j. solicit and accept gifts, grants, loans, and other aids from any source or participate in any other way in any government program to carry out the purposes of this act;
- k. require a reasonable length of State residence for qualified beneficiaries, as appropriate;
- l. reasonably restrict the number of participants in the county college plan and the university plan according to criteria developed by the board. A person denied participation solely on the basis of this restriction shall be granted priority for participation during the succeeding year;
- m. segregate contributions and payments to the fund into various accounts;
- n. establish reasonable administrative fees in connection with any transaction and impose reasonable penalties, including default, for delinquent payments or for entering into an advance payment contract on a fraudulent basis;
- o. procure insurance against any loss in connection with the property, assets and activities of the fund or the board;
- p. provide for the receipt of contributions in lump sums or installment payments;
- q. impose reasonable limits on the length of time within which a qualified beneficiary shall be required to begin to exercise benefits under the program. The board shall also determine whether to impose limits on the total amount of time that the qualified beneficiary is permitted to exercise the benefits under the program ;
- r. delineate the terms under which payments may be withdrawn from the fund and impose reasonable fees and charges for withdrawals;
- s. define for the purposes of this act the maximum number of credit hours which may be purchased under the program for an associate degree; the maximum number of credit hours which may be purchased under the program for a baccalaureate degree; the average current and projected tuition within the county college system and the average current and projected tuition of the four-year public institutions of higher education utilized to limit the contractual obligations of the board to qualified beneficiaries;
- t. adopt rules and regulations to implement this act; and
- u. take all actions required so that the program is treated as a qualified State tuition program under section 529 of the federal Internal Revenue Code of 1986, 26 U.S.C.s.529.

C.18A:71B-71 Establishment of comprehensive investment plan, administration of program annual report.

8. a. The board, acting with the approval of the State Investment Council in the Division of Investment, shall establish a comprehensive investment plan for the purposes of this act and annually review the plan to assure that the program remains actuarially sound. The comprehensive investment plan shall specify the investment policies to be utilized by the board in its administration of the fund. The board may place assets of the fund in savings accounts or use the funds to purchase fixed or variable life insurance or annuity contracts, securities, evidence of indebtedness or other investment products, pursuant to the comprehensive investment plan and in such proportions as may be designated or approved under that plan. The board shall be subject to the "prudent person" standard of care applicable to the Division of Investment in the Department of the Treasury pursuant to subsection b. of section 11 of P.L.1950, c.270 (C.52:18A-89). The insurance, annuity, savings or investment products shall be underwritten and offered in compliance with the applicable federal and State laws and regulations and by persons who are duly authorized by applicable federal and State authorities.

b. The board may delegate responsibility for administration of the program to a person the board determines to be qualified. Directly or through the person, the board may contract, in accordance with the provisions of P.L.1954, c.48 (C.52:34-6 et seq.), with a private corporation or institution authorized to do business in this State to provide such services as may be a part of the program or as may be deemed necessary for implementation of the program, including, but not limited to, providing consolidated billing, individual and collective record keeping and accounting, asset purchase, control and safekeeping , investment management, marketing, administration, program operations, and other services deemed necessary and proper to carry out the purposes of this act. In the event that the board delegates a private entity as the investment manager, the assets of the fund shall be invested in accordance with an investment

plan approved by the State Investment Council in the Division of Investment.

The board shall determine whether the services deemed necessary and proper to carry out the purposes of this act shall be provided by a single or multiple entities.

c. The board shall annually prepare or cause to be prepared a report setting forth in appropriate detail an accounting of the fund and a description of the financial condition of the program at the close of each fiscal year. The report shall be submitted to the Governor, the President of the Senate, the Speaker of the General Assembly, the State Treasurer, the executive director of the New Jersey Commission on Higher Education and the executive director of the Higher Education Student Assistance Authority on or before August 1 each year. In addition, the board shall make the report available to purchasers of advance payment contracts. The board shall provide to the Commission on Higher Education by August 1 each year complete advance payment contract sales information, including projected higher education enrollments of qualified beneficiaries.

d. The accounts of the funds shall be subject to annual audits by the State Auditor or a designee. In addition, the board shall commission an annual independent audit of the program. The results of the independent audit shall be provided to the Governor, the President of the Senate, the Speaker of the General Assembly, the State Treasurer, the executive director of the New Jersey Commission on Higher Education and the executive director of the Higher Education Student Assistance Authority. If the board delegates responsibility for the administration of the comprehensive investment plan pursuant to subsection b. of this section, the cost of the independent audit shall be borne by that person.

e. The board may make available insurance coverage written exclusively for the purpose of protecting advance payment contracts, and the purchasers or beneficiaries thereof, which may be issued in the form of a group term life policy to purchasers of advance payment contracts.

f. Materials produced for the purpose of marketing the program shall be submitted to the board for review and approval. Marketing materials shall not be made available or distributed to the public prior to the materials being approved by the board. An institution of higher education may distribute marketing materials produced for the program. The State and the board shall not be liable for misrepresentation of the program by a marketing agent.

g. Statements, reports on distributions and information returns relating to accounts shall be prepared, distributed, and filed to the extent required by section 529 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.529.

C.18A:71B-72 Development of advance payment contract, terms.

9. a. The board shall develop an advance payment contract with the assistance of the Office of the Attorney General. An advance payment contract shall be exempt from the provisions of Subtitle 3 of Title 17 of the Revised Statutes and Subtitle 3 of Title 17B of the New Jersey Statutes. The contents of the contract shall include, but not be limited to, the following:

- (1) the amount of the payments and the number of payments required from a purchaser;
- (2) the terms and conditions under which purchasers are required to remit payments, including, but not limited to, the date or dates upon which each payment is due;
- (3) provisions for late payment charges and for default;
- (4) provisions for penalty fees for withdrawals from the fund;
- (5) the name and date of birth of the qualified beneficiary on whose behalf the contract is drawn and the terms and conditions under which another person may be substituted as the qualified beneficiary;
- (6) the name of any person who may cancel the contract. The terms of the contract shall specify whether the contract may be canceled by the purchaser, the qualified beneficiary, a specific designated person or any combination of these persons;
- (7) the terms and conditions under which a contract may be canceled, the name of the person entitled to any refund due as a result of the cancellation of the contract pursuant to those terms and conditions, and the method for determining the amount of refund;
- (8) the time limitations, if any, within which the qualified beneficiary is required to claim benefits through the program. If time limitations are included in the contract, the time

expended by a qualified beneficiary as an active duty member of any of the armed services of the United States shall be added to the period of time permitted to exercise the benefits;

(9) the terms and conditions, if any, under which a purchaser may designate another individual as a successor owner of the contract; and

(10) other terms and conditions deemed by the board to be necessary or proper.

b. In addition to the provisions of subsection a. of this section an advance payment contract shall include the following:

(1) the number of credit hours contracted by the purchaser;

(2) the plan toward which the credit hours shall be applied;

(3) the assumption of a contractual obligation by the board to the qualified beneficiary to provide for a specified number of credit hours of undergraduate instruction at a public institution of higher education, not to exceed the maximum number of credit hours which may be purchased under the program for the associate degree or the baccalaureate degree, as appropriate .

C.18A:71B-73 Availability of advance payment contracts; plans.

10. a. At a minimum, the board shall make advance payment contracts available for two independent plans to be known as the county college plan and the university plan.

(1) Through the county college plan, the advance payment contract shall provide prepaid tuition for a specified number of undergraduate credit hours not to exceed the maximum number of credit hours which may be purchased under the program for an associate degree. The cost of participation in the county college plan shall be based primarily on the average current and projected tuition within the county college system and the number of years expected to elapse between the purchase of the plan on behalf of a qualified beneficiary and the exercise of the benefits provided in the plan by the qualified beneficiary. Qualified beneficiaries shall bear the cost of any laboratory fees associated with enrollment in specific courses. In the event that a qualified beneficiary chooses to attend a four-year public institution of higher education, the qualified beneficiary may convert the maximum number of credit hours which may be purchased under the program for an associate degree from a county college plan to a university plan. Each qualified beneficiary shall be classified as an in-county resident for tuition purposes regardless of his actual legal residence during the period in which benefits under the program are being utilized.

(2) Through the university plan, the advance payment contract shall provide prepaid tuition for a specified number of undergraduate credit hours not to exceed the maximum number of credit hours which may be purchased under the program for a baccalaureate degree. The cost of participation in the university plan shall be based primarily on the average current and projected tuition of the four-year public institutions of higher education and the number of years expected to elapse between the purchase of the plan on behalf of a qualified beneficiary and the exercise of the benefits provided in the plan by the beneficiary. Qualified beneficiaries shall bear the cost of any laboratory fees associated with enrollment in specific courses. In the event that a qualified beneficiary fails to be admitted to a four-year public institution of higher education or chooses to attend a county college, the qualified beneficiary may convert the maximum number of credit hours which may be purchased under the program for an associate degree from a university plan to a county college plan and may retain the remaining credit hours in the university plan or may request a refund for prepaid credit hours in excess of the maximum number of credit hours which may be purchased under the program for an associate degree. A refund may also be requested for the difference in the cost of credit hours under the university plan and the county college plan for the number of credit hours converted to the county college plan. Each qualified beneficiary shall be classified as a resident for tuition purposes regardless of his actual legal residence during the period in which benefits under the program are being utilized.

b. In addition to the plans required pursuant to subsection a. of this section, the board may make advance payment contracts available for other plans, such as the county college plus university plan whereby the advance payment contract would provide tuition that would allow a qualified beneficiary to attend a county college for an associate degree and then attend a four-

year public institution of higher education for a baccalaureate degree.

c. The board shall establish procedures for conversions between plans established under the program. The procedures shall include, but not be limited to, the conditions under which a conversion may occur and the method for calculating any refund due.

d. A qualified beneficiary may apply a county college plan or a university plan toward any eligible independent institution of higher education. The board shall transfer or cause to have transferred to the eligible independent institution of higher education designated by the qualified beneficiary an amount not to exceed the weighted average tuition purchased under the advance payment contract. In the event that the cost of tuition at the eligible independent institution of higher education is less than the weighted average tuition purchased under the advance payment contract, the amount transferred shall not exceed the actual cost of tuition. A transfer authorized pursuant to this subsection shall not exceed the number of credit hours contracted on behalf of a qualified beneficiary.

e. A qualified beneficiary may apply the benefits of an advance payment contract toward an eligible out-of-State institution of higher education. Institutional eligibility for out-of-State institutions of higher education shall be determined by the board, but in making those determinations the board shall recognize that the benefits may only be used at an out-of-State institution of higher education whose students are eligible to receive benefits under section 529 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.529. The board shall transfer or cause to have transferred to the eligible out-of-State institution of higher education designated by the qualified beneficiary an amount not to exceed the weighted average tuition purchased under the advance payment contract. In the event that the cost of tuition at the eligible out-of-State institution of higher education is less than the weighted average tuition purchased under the advance payment contract, the amount transferred shall not exceed the actual cost of tuition. A transfer authorized pursuant to this subsection shall not exceed the number of credit hours contracted on behalf of a qualified beneficiary.

C.18A:71B-74 Conditions for payment of refunds.

11. a. The board shall determine the conditions under which refunds are payable under the program. Unless authorized by the board or under the provisions of this section, a refund shall not exceed the amount paid into the fund by the purchaser. A refund may exceed the amount paid into the fund in the following circumstances:

(1) if the qualified beneficiary is awarded a scholarship (or allowance or payment described in subparagraph (B) or (C) of paragraph (1) of subsection (d) of section 135 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.135), the terms of which cover the benefits included in the advance payment contracts, moneys paid for the purchase of the advance payment contracts may be returned to the purchaser in enrollment period installments coinciding with the matriculation by the qualified beneficiary in amounts equal to the lesser of the original purchase price plus 5% interest compounded annually, or the weighted average tuition purchased under the advance payment contract; and

(2) in the event of the death or disability of the qualified beneficiary, moneys paid for the purchase of advance payment contracts shall be returned to the purchaser together with 5% interest compounded annually.

b. A refund shall not be authorized through an advance payment contract for any school year partially attended but not completed. For purposes of this subsection, a school year partially attended but not completed means any one enrollment period whereby the student is still enrolled at the conclusion of the official drop-add period, but withdraws before the end of the enrollment period.

c. If a qualified beneficiary does not complete a county college plan or university plan, for reasons other than specified in subsection a. of this section, the purchaser shall receive a refund of the amount paid into the fund for the remaining unattended years of the advance payment contract pursuant to rules promulgated by the board and in accordance with the provisions of section 529 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.529.

C.18A:71B-75 Exemption from creditors.

12. Moneys paid into or out of the fund by or on behalf of a purchaser or qualified beneficiary of an advance payment contract for the purposes of financing the cost of qualified higher education expenses under the program are exempt from all claims of creditors of the purchaser or the beneficiary.

C.18A:71B-76 Remittance of payments through governmental payroll deductions.

13. The State or any State agency, county, municipality, or other political subdivision may, by contract or collective bargaining agreement, agree with any employee to remit payments toward advance payment contracts through payroll deductions made by the appropriate officer or officers of the State, State agency, county, municipality, or political subdivision. The payments shall be held and administered in accordance with this act.

C.18A:71B-77 Appropriations necessary for distributions.

14. If the investment manager is the Division of Investment in the Department of the Treasury, in order to meet the obligations of the board under this act, there shall be paid to the board for deposit in the fund, at the time of distribution, subject to appropriation, such sum, if any, as shall be certified by the chair of the board as necessary to provide that amount at the time of distribution. The chair shall make and deliver to the Governor, or his designee, the certificate stating the sums, if any, required to make available in the fund the amount aforesaid, and the sums so certified shall be appropriated and paid to the board during the then current State fiscal year.

C.18A:71B-78 Discontinuance of program.

15. In the event that the State Treasurer determines the program to be financially infeasible, the State may discontinue the provision of the program. A qualified beneficiary who has been accepted by and is enrolled or is within five years of enrollment in an institution of higher education shall be entitled to exercise the benefits for which he has contracted. All other contract holders shall receive a refund of the amount paid into the fund.

C.18A:71B-79 Admission to public colleges, guaranteed; requirements.

16. a. A qualified beneficiary who graduates from high school with a 3.0 cumulative grade point average on a 4.0 scale in an academic program or a 3.2 cumulative grade point average on a 4.0 scale in a vocational-educational program, based upon grades in core curriculum content subject areas as determined by the board, or who graduates in the top 15% of his high school graduating class shall be admitted to a public institution of higher education. In order to be admitted to a public institution of higher education pursuant to this section, the qualified beneficiary shall meet all of the institution's requirements for admittance. This provision shall not be construed to promise or guarantee that a qualified beneficiary shall be admitted to a particular public institution of higher education.

b. In order to effectuate the provisions of subsection a. of this section, the board, in consultation with the Commission on Higher Education, shall develop a process to assist qualified beneficiaries in applying to all public institutions of higher education.

C.18A:71B-80 Admission to particular college, continuance not guaranteed; obligation of State limited.

17. a. Nothing in this article shall be construed to guarantee that a qualified beneficiary will be admitted to a particular higher education institution or be allowed to continue enrollment at or graduate from a higher education institution after admission.

b. Nothing in this article shall establish any obligation or liability on the part of this State or any agency or instrumentality of this State with respect to any federal or State tax liability of any contributor or designated beneficiary in this program.

c. Under regulations promulgated by the board, every contract and application that may be used in connection with the program shall clearly indicate that the contract is not insured by this State, other than as set forth in sections 14 and 15 of P.L.2001, c.262 (C.18A:71B-77 and C.18A:71B-78).

18. N.J.S.18A:71B-40 is amended to read as follows:

Selection of investment manager.

18A:71B-40. a. The authority shall select an investment manager or managers to invest the funds of the trust or the funds in accounts. In making this selection, any investment manager shall be subject to the "prudent person" standard of care applicable to the Division of Investment in the Department of the Treasury pursuant to subsection b. of section 11 of P.L.1950, c.270 (C.52:18A-89), and the authority shall consider the impact of fees and costs imposed by the manager or managers on yield to contributors.

b. The authority may select more than one investment manager and investment instrument for the program if it is in the best interest of contributors and will not interfere with the administration of the program.

c. The authority may provide a contributor with a choice of investment managers or investment instruments or both for the program if both of the following conditions exist:

(1) the federal Internal Revenue Service has provided guidance that providing a contributor with a choice of investment managers or instruments under a State tuition program will not cause the program to fail to qualify for favorable tax treatment under section 529 of the federal Internal Revenue Code of 1986, 26 U.S.C.s.529; and

(2) the authority concludes that a choice of investment managers or of investment instruments is in the best interest of contributors and will not interfere with the administration of the program.

d. the authority terminates the designation of an investment manager to hold accounts, and accounts must be moved from that investment manager to another investment manager, the authority shall select the investment manager and type of investment instrument to which the balance of the account is moved, unless the federal Internal Revenue Service provides guidance that allowing the contributor to select among several investment managers or investment instruments that have been selected by the authority would not cause a program to cease to be a qualified State tuition program for the purposes of section 529 of the federal Internal Revenue Code, 26 U.S.C.s.529.

e. If the selection process provided for in this section results in an investment manager other than the Division of Investment, the authority shall provide for the orderly transfer of accounts and shall ensure that all the rights of the contributors and designated beneficiaries participating in the program as of the effective date of P.L.2001, c.262 (C.18A:71B-64 et al.), are protected.

19. N.J.S.18A:71B-44 is amended to read as follows:

Assurance of availability of principal.

18A:71B-44. a. If the investment manager is the Division of Investment in the Department of the Treasury, in order to assure the availability of principal of any amount contributed under this article, there shall be paid to the authority for deposit in the trust, at the time of distribution, subject to appropriation, such sum, if any, as shall be certified by the chair of the authority as necessary to provide that amount at the time of distribution. The chair shall make and deliver to the Governor, or his designee, the certificate stating the sums, if any, required to make available in the trust the amount aforesaid, and the sums so certified shall be appropriated and paid to the authority during the then current State fiscal year.

b. If the investment manager is a private entity, the investment of the principal and interest of any amount contributed under this article shall be made in accordance with an investment plan approved by the State Investment Council in the Division of Investment.

C.18A:71B-41.1 Exemption from claims of creditors for NJBEST accounts.

20. Moneys paid into or out of an NJBEST account by or on behalf of a contributor or designated beneficiary for the purposes of financing the cost of qualified higher education expenses under this article are exempt from all claims of creditors of the contributor or the designated beneficiary.

21. Section 13 of P.L.1997, c.237 (C.54A:6-25) is amended to read as follows:

C.54A:6-25 State tuition programs, education; distributions, certain, excluded from gross income.

13. a. Gross income shall not include earnings on an education individual retirement account or a qualified State tuition program account until the earnings are distributed from the account, at which time they shall be includible in the gross income of the distributee except as provided in this section.

b. Gross income shall not include qualified distributions as defined in paragraph (3) of subsection c. of this section.

c. For purposes of this section:

(1) "Education individual retirement account" means an education retirement account as defined pursuant to paragraph (1) of subsection (b) of section 530 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.530.

(2) "Qualified State tuition program account" means an account established pursuant to the "New Jersey Better Educational Savings Trust (NJBEST) Program," (N.J.S.18A:71B-35 et seq.), an account established pursuant to the "New Jersey Prepaid Higher Education Expense Program," P.L.2001, c.262 (C.18A:71B-64 et seq.) or an account established pursuant to any qualified State tuition program, as defined pursuant to subsection (b) of section 529 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.529 or a tuition credit or certificate purchased pursuant to any such program.

(3) "Qualified distribution" means any of the following:

(a) a distribution from a qualified State tuition program account that is used for qualified higher education expenses as defined pursuant to paragraph (3) of subsection (e) of section 529 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.529;

(b) a rollover from one account to another account as described in clause (i) of subparagraph (C) of paragraph (3) of subsection (c) of section 529 or paragraph (5) of subsection (d) of section 530 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.529 or 530;

(c) a change in designated beneficiaries of an account as described in clause (ii) of subparagraph (C) of paragraph (3) of subsection (c) of section 529 or paragraph (6) of subsection (d) of section 530 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.529 or 530;

d. The portion of a distribution from an education individual retirement account or a qualified State tuition program account that is attributable to earnings shall be determined in accordance with the principles of section 72 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.72, as applied for purposes of sections 529 and 530 of the federal Internal Revenue Code of 1986, 26 U.S.C. ss.529 and 530.

22. There is appropriated from the General Fund to the Prepaid Higher Education Expense Board in, but not of, the Department of State \$250,000 to effectuate the provisions of this act.

23. This act shall take effect immediately.

Approved December 11, 2001.