

LEGISLATIVE HISTORY CHECKLIST

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"New Jersey Educational Saving Trust Program"

NJSA: 18A:72-43 to 18A:72-54

LAWS OF: 1997 CHAPTER: 237

BILL NO: S2012

SPONSOR(S): Kyrillos

DATE INTRODUCED: April 17, 1997

COMMITTEE: ASSEMBLY: ---
SENATE: Education

AMENDED DURING PASSAGE: Yes Senate committee substitute
(2R) enacted

DATE OF PASSAGE: ASSEMBLY: June 26, 1997
SENATE: June 19, 1997

DATE OF APPROVAL: September 2, 1997

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes Also attached: statement
adopted 6-19-97

COMMITTEE STATEMENT: ASSEMBLY: No
SENATE: Yes

FISCAL NOTE: No

VETO MESSAGE: No

MESSAGE ON SIGNING: Yes

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

See newspaper clippings--attached:

"Seeking the best way to save up for college," 9-3-97, Asbury Park Press.

KBP:pp

§§1 - 12
C. 18A:72-43
To
18A:72-54
§13
C. 54A:6-25
§14
Note To §13

P.L. 1997, CHAPTER 237, *approved September 2, 1997*
Senate Committee Substitute (*Second Reprint*) for
Senate, No. 2012

1 AN ACT establishing a college savings program and supplementing
2 Titles 18A and 54A 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. Sections 1 through 12 of this act establish a college savings
8 plan and shall be known and may be cited as the "New Jersey Better
9 Educational Savings Trust (NJBEST) Act."

10

11 2. The Legislature finds and declares that:

12 a. This State is committed to making world-class education
13 accessible and affordable for all New Jersey students;

14 b. When families save for college education, they are making an
15 important investment in the future for themselves and the young
16 people of this State;

17 c. Incentives are needed to encourage families to save for college
18 education;

19 d. The "Small Business Job Protection Act of 1996," Pub.L.104-
20 188, amended the federal Internal Revenue Code to provide for
21 favorable tax treatment for qualified college savings programs and
22 participants in the programs; and

23 e. In addition to favorable federal tax treatment for a college
24 savings program and its participants, it is desirable to provide
25 favorable State tax treatment, as a special incentive for student
26 beneficiaries to attend college in this State.

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 SBA committee amendments adopted June 16, 1997.

² Senate floor amendments adopted June 19, 1997.

1 3. As used in this act:

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

4 "Authority" means the New Jersey Higher Education Assistance
5 Authority;

6 "Contributor" means the person or organization contributing to and
7 maintaining an account and having the right to withdraw funds from
8 the account before the account is disbursed to or for the benefit of the
9 designated beneficiary;

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

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

33 "Investment Manager" means the Division of Investment in the
34 Department of the Treasury or the private entities authorized to do
35 business in this State that may be designated by the authority to invest
36 the funds of the trust pursuant to the terms of this act;

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

40 "Nonqualified withdrawal" means a withdrawal from an account
41 other than: a. a qualified withdrawal; b. a withdrawal made as the
42 result of the death or disability of the designated beneficiary of an
43 account; c. a withdrawal made on account of a scholarship (or
44 allowance or payment described in subparagraphs (B) or (C) of
45 paragraph (1) of subsection (d) of section 135 of the federal Internal

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

11 "Program" means the "New Jersey Better Educational Savings
12 Trust (NJBEST) Program" established pursuant to this act;

13 "Qualified higher education expenses" means expenses described
14 in paragraph (3) of subsection (e) of section 529 of the federal Internal
15 Revenue Code of 1986, 26 U.S.C. §529 incurred in connection with the
16 enrollment of a designated beneficiary at a higher education 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. §529;

24 "Trust" means the "New Jersey Better Educational Savings Trust"
25 established pursuant to section 4 of this act.

26

27 4. There is created within the New Jersey Higher Education
28 Assistance Authority the New Jersey Better Educational Savings
29 (NJBEST) Trust. The trust shall provide a mechanism through which
30 the authority, as trustee, holds accounts established and maintained
31 pursuant to the provisions of this act to finance the cost of qualified
32 higher education expenses.

33

34 5. The Office of Student Assistance shall administer the NJBEST
35 Program established in the authority. The authority shall have the
36 power to:

37 a. serve as trustee of the trust;

38 b. adopt rules and regulations pursuant to the "Administrative
39 Procedures Act," P.L.1968, c.410 (C.52:14B-1 et seq.), necessary to
40 carry out the provisions of this act;

41 c. prescribe and provide appropriate forms for participation in the
42 program;

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

45 e. monitor the investment manager and any other contractors by

1 audits and other reports;

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

4 g. impose penalties for nonqualified withdrawals;

5 h. take all actions required so that the program is treated as a
6 qualified State tuition program under section 529 of the federal
7 Internal Revenue Code of 1986, 26 U.S.C. §529; and

8 i. perform any other acts which may be deemed necessary or
9 appropriate to carry out the objects and purposes of this act.

10

11 6. Neither the members of the authority, nor any officer or
12 employee of the authority shall be liable personally for the debts,
13 liabilities or obligations of the program established pursuant to this
14 act.

15

16 7. a. The authority shall select an investment manager or
17 managers to invest the funds of the trust or the funds in accounts. In
18 making this selection, ¹any investment manager shall be subject to the
19 "prudent person" standard of care applicable to the Division of
20 Investment in the Department of the Treasury pursuant to subsection
21 b. of section 11 of P.L.1950, c.270 (C.52:18A-89), and¹ the authority
22 shall ¹[promote an investment policy, the objectives of which include
23 minimization of risk, liquidity, and maximization of yield] consider the
24 impact of fees and costs imposed by the manager or managers on yield
25 to contributors¹ .

26 b. The authority may select more than one investment manager
27 and investment instrument for the program if it is in the best interest
28 of contributors and will not interfere with the administration of the
29 program.

30 c. The authority may provide a contributor with a choice of
31 investment managers or investment instruments or both for the
32 program if both of the following conditions exist:

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

38 (2) the authority concludes that a choice of ¹investment managers
39 or of¹ investment instruments is in the best interest of contributors
40 and will not interfere with the administration of the program.

41 d. If the authority terminates the designation of an investment
42 manager to hold accounts, and accounts must be moved from that
43 investment manager to another investment manager, the authority shall
44 select the investment manager and type of investment instrument to
45 which the balance of the account is moved, unless the federal Internal

1 Revenue Service provides guidance that allowing the contributor to
2 select among several investment managers or investment instruments
3 that have been selected by the authority would not cause a program to
4 cease to be a qualified State tuition program for the purposes of
5 section 529 of the federal Internal Revenue Code, 26 U.S.C. §529.

6
7 8. a. The program shall be operated as a trust through the use of
8 accounts for designated beneficiaries. An account may be opened by
9 any person who desires to save to pay the qualified higher education
10 expenses of an individual by satisfying each of the following
11 requirements:

12 (1) completing an application in the form prescribed by the
13 authority;

14 (2) paying the one-time application fee established by the
15 authority;

16 (3) making the minimum contribution required by the authority for
17 opening an account;

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

19 (5) in the case of an account to which subsection a. of section 11
20 of this act would apply, demonstrating to the satisfaction of the
21 authority that either the contributor, if an individual, or the designated
22 beneficiary is a New Jersey resident. The requirement of New Jersey
23 residency for either the contributor or the designated beneficiary
24 would not apply to an account to which subsection b. of section 11 of
25 this act would apply unless otherwise determined by the authority;

26 b. Except as provided under section 9 of this act, 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 pursuant to regulations, in accordance with section
31 529 of the federal Internal Revenue Code of 1986, 26 U.S.C. §529.

32 d. Contributors may withdraw all or part of the balance from an
33 account on sixty days' notice or a shorter period, as may be authorized
34 by the authority pursuant to regulations.

35 e. A contributor may change the designated beneficiary of an
36 account or rollover all or a portion of an account to another account
37 if the change or rollover would not result in a distribution includible
38 in gross income under section 529 of the federal Internal Revenue
39 Code of 1986, 26 U.S.C. §529, in accordance with procedures
40 established by the authority.

41 f. In the case of any nonqualified withdrawal, a penalty at a level
42 established by the authority and sufficient to be considered a more than
43 de minimis penalty for purposes of section 529 of the federal Internal
44 Revenue Code of 1986, 26 U.S.C. §529, shall be withheld and paid to
45 the authority for use in operating and marketing the program. The

1 authority may elect not to impose a penalty if that section ceases to
2 include a provision requiring more than de minimis penalties for a
3 program to qualify as a qualified State tuition program.

4 g. If a contributor makes a nonqualified withdrawal and a penalty
5 amount is not withheld pursuant to subsection f. of this section or the
6 amount withheld is less than the amount required to be withheld under
7 that subsection, the contributor shall pay the unpaid portion of the
8 penalty to the authority at the same time that the contributor files a
9 State income tax return for the taxable year of the withdrawal, or if the
10 contributor does not file a return, the unpaid portion of the penalty
11 shall be paid on or before the due date for the filing of that income tax
12 return.

13 h. Each account shall be maintained separately from each other
14 account under the program.

15 i. Separate records and accounting shall be maintained for each
16 account for each designated beneficiary.

17 j. A contributor to or designated beneficiary of any account shall
18 not direct the investment of any contributions to an account or the
19 earnings from the account, except as permitted under section 529 of
20 the federal Internal Revenue Code of 1986, 26 U.S.C. §529.

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

24 l. The maximum contribution for any designated beneficiary shall
25 be determined by the authority pursuant to regulations, in accordance
26 with section 529 of the federal Internal Revenue Code of 1986, 26
27 U.S.C. §529.

28 m. Statements, reports on distributions and information returns
29 relating to accounts shall be prepared, distributed, and filed to the
30 extent required by section 529 of the federal Internal Revenue Code
31 of 1986, 26 U.S.C. §529, or regulations issued thereunder.

32 n. The authority may charge, impose and collect reasonable
33 administrative fees and service charges in connection with any
34 agreement, contract or transaction relating to the program. These fees
35 and charges may be imposed directly on contributors or may be taken
36 as a percentage of the investment earnings on accounts.

37
38 9. a. An amount of no less than \$500 shall be provided by the
39 State for the qualified higher education expenses of a designated
40 beneficiary at the time of a qualified withdrawal provided that:

41 (1) the contributor demonstrates, to the satisfaction of the
42 authority, that the contributor participated in the program for at least
43 four years by making a qualifying minimum initial deposit or qualifying
44 minimum annual contributions, or both, as shall be determined by the
45 authority, for a designated beneficiary;

1 (2) the designated beneficiary demonstrates, to the satisfaction of
2 the authority, attendance or enrollment in a higher education
3 institution in this State, at the time of initial attendance or enrollment
4 in the higher education institution; and

5 (3) either the contributor, if an individual, or the designated
6 beneficiary demonstrates, to the satisfaction of the authority, that the
7 contributor or designated beneficiary is a New Jersey resident.

8 b. The amount provided under subsection a. of this section shall
9 meet the requirements of a qualified scholarship within the meaning of
10 section 117 of the federal Internal Revenue Code of 1986, 26
11 U.S.C. §117, for a designated beneficiary satisfying the requirements
12 of subsection a. of this section.

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

15
16 10. Annually, the authority shall determine a dollar amount of an
17 account, which shall not be less than \$25,000, which shall not be
18 considered in evaluating the financial needs of a student enrolled in an
19 institution of higher education located in the State of New Jersey, or
20 be deemed a financial resource or a form of financial aid or assistance
21 to a student, for purposes of determining the eligibility of a student for
22 any scholarship, grant, or monetary assistance awarded by the State;
23 nor shall the amount of any account as determined by the authority
24 provided for a designated beneficiary under this act reduce the amount
25 of any scholarship grant or monetary assistance which the student is
26 entitled to be awarded by the State.

27
28 11. a. If the investment manager is the Division of Investment in
29 the Department of the Treasury, in order to assure the availability of
30 principal of any amount contributed under this act, there shall be paid
31 to the authority for deposit in the trust, at the time of distribution,
32 subject to appropriation, such sum, if any, as shall be certified by the
33 chairman of the authority as necessary to provide that amount at the
34 time of distribution. The chairman shall make and deliver to the
35 Governor, or his designee, the certificate stating the sums, if any,
36 required to make available in the trust the amount aforesaid, and the
37 sums so certified shall be appropriated and paid to the authority during
38 the then current State fiscal year.

39 b. If the investment manager is a private entity, the investment of
40 the principal ²and interest² of any amount contributed under this act
41 shall be ²backed by the full faith and credit of the United States or be²
42 ¹fully¹ insured by the Federal Deposit Insurance Corporation or other
43 similar insurer backed by the full faith and credit of the United States
44 ¹[up to the maximum amount of insurance normally provided by the
45 insurer]. No account balance shall exceed ²[\$100,000] the maximum

1 amount of insurance provided by the insurer². No investment is
2 permitted in derivatives of eligible securities, and any investment must
3 be designed to balance prospective payments according to the
4 guidelines established¹.

5

6 12. a. Nothing in this act shall be construed to:

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

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

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

15 b. Nothing in this act establishes any obligation of this State or
16 any agency or instrumentality of this State to guarantee for the benefit
17 of any contributor or designated beneficiary any of the following:

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

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

20 c. Nothing in this act establishes any obligation or liability of this
21 State or any agency or instrumentality of this State with respect to any
22 federal or State tax liability of any contributor or designated
23 beneficiary in this program.

24 d. Under regulations promulgated by the authority, every contract
25 and application that may be used in connection with a contribution to
26 an account shall clearly indicate that the account is not insured by this
27 State nor is the investment return guaranteed by this State.

28

29 13. a. Gross income shall not include the earnings on or
30 distribution from an individual trust account or savings account
31 established pursuant to the "New Jersey Better Educational Savings
32 Trust Program" established pursuant to P.L. , c. (C.)(now
33 pending before the Legislature as this bill).

34 b. "Distribution" means a withdrawal which pays the designated
35 beneficiary's qualified higher education expenses described in section
36 529 of the federal Internal Revenue Code of 1986, 26 U.S.C. §529 or
37 which represents contributions net of earnings thereon.

38

39 14. If the Congress of the United States enacts legislation that
40 exempts educational savings accounts from federal income taxation,
41 sections 9 and 10 of this act shall apply with respect to such
42 educational savings accounts as if they were accounts established
43 under this act and the beneficiaries of the accounts were designated
44 beneficiaries subject to the approval of the New Jersey Higher
45 Education Assistance Authority.

1 15. This act shall take effect immediately.

2

3

4

5

6 "New Jersey Better Educational Savings Trust (NJBEST) Act."

SENATE, No. 2012

STATE OF NEW JERSEY

INTRODUCED APRIL 17, 1997

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DO NOT REMOVE

By Senator KYRILLOS

1 AN ACT establishing a New Jersey family college savings program and
2 providing gross income tax incentives for certain college savings,
3 supplementing Titles 18A and 54A of the New Jersey Statutes.

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

7
8 1. Sections 1 through 8 of this act shall be known and may be cited
9 as the "New Jersey College Savings Plan Act."

10
11 2. The Legislature hereby finds and declares that promoting the
12 education of the residents of this State and helping students afford the
13 expenses of higher education are in the best interests of the State
14 government; that tuition costs at public and private institutions of
15 higher education are difficult for many to afford; that fostering higher
16 education to provide well-educated citizens is in the best interests of
17 the State; that fostering the ability of students to choose which
18 institution of higher education to attend is in the best interest of the
19 State; that students in the secondary schools tend to achieve a higher
20 standard of performance when the payment of tuition for their higher
21 education is secured; that promoting individual savings for college is
22 in the best interests of the State; and that it is not in the best interest
23 of this State for it to place its funds at risk by providing its full faith
24 and credit to support a college savings program.

25 The purposes of this act are to establish a college savings program
26 and provide guidelines for the State in maintaining such program, all
27 with the following goals:

28 a. Encouraging individuals to save to help pay the costs of higher
29 education;

30 b. Helping make the benefits of higher education available to the
31 people of this State;

32 c. Promoting economic development of this State by creating
33 opportunities for a more highly educated workforce;

34 d. Enabling residents of the State to benefit from the tax incentives
35 provided for qualified state tuition programs under the federal Internal
36 Revenue Code; and

37 e. Attracting students to public and private colleges and

1 universities within the State.

2

3 3. As used in this act:

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

6 "Account owner" means the person designated at the time an
7 account is opened as having the right to withdraw funds from the
8 account before the account is disbursed to or for the benefit of the
9 designated beneficiary;

10 "Authority" means the New Jersey Higher Education Assistance
11 Authority;

12 "Designated beneficiary" means, except as provided in subsection
13 j. of section 6 of this act, with respect to an account the individual
14 designated at the time the account is opened as the individual whose
15 higher education expenses are expected to be paid from the account
16 or, if such designated beneficiary is replaced in accordance with
17 subsection c. of section 6 of this act, such replacement;

18 "Financial institution" means a bank, a commercial bank, a national
19 bank; a savings bank, a savings and loan, a thrift, a credit union, an
20 insurance company, a trust company, a mutual fund, or other similar
21 entity, and includes a state college savings trust;

22 "Higher education institution" means:

23 a. an institution described in section 1201 (a) or subparagraph (C)
24 or (D) of section 481 (a) (1) of the federal Higher Education Act of
25 1965, Pub.L.89-329 (as in effect on October 21, 1988); and

26 b. an area vocational education school (as defined in subparagraph
27 (C) or (D) of section 521 (3) of the federal Carl D. Perkins Vocational
28 Education Act, Pub.L.88-210 (20 U.S.C. §2471), as in effect on
29 October 21, 1988) located in the State;

30 "Member of family" means with respect to an individual:

31 a. an ancestor of the individual,

32 b. the spouse of the individual,

33 c. a lineal descendent of the individual, of the individual's spouse,
34 or of a parent of such individual,

35 d. the spouse of any lineal descendant described in subsection c. of
36 this definition; and

37 e. for purposes of this definition, a legally adopted child shall be
38 treated as a child by blood;

39 "Office" means the Office of Student Assistance;

40 "Nonqualified withdrawal" means a withdrawal from an account
41 other than:

42 a. a qualified withdrawal;

43 b. a withdrawal made as the result of the death or disability of the
44 designated beneficiary of an account;

45 c. a withdrawal made on the account of a scholarship (or allowance
46 or payment described in subparagraphs (B) or (C) of paragraph (1) of

1 subsection (d) of section 135 of the federal Internal Revenue Code of
2 1986, 26 U.S.C. §135, designated beneficiary, but only to the extent of
3 the amount of that scholarship, allowance, or payment; or

4 d. a rollover or change in designated beneficiary described in
5 subsection c. of section 6 of this act;

6 "Program" means the "New Jersey Family College Savings
7 Program" established under this act;

8 "Qualified higher education expenses" means tuition, fees, books
9 supplies and equipment required for enrollment or attendance of a
10 designated beneficiary at a higher education institution;

11 "Qualified withdrawal" means a withdrawal from an account to pay
12 the qualified higher education expenses of the designated beneficiary
13 of the account, but only if made in accordance with rules prescribed
14 under subsection b. of section 6 of this act;

15 "State college savings trust" means a trust established by the State
16 or a State agency if:

17 a. units in the trust are sold exclusively through the program for
18 college savings; and

19 b. The State or State agency manages (with or without the
20 assistance of professional investment advisers) the investments of the
21 trust.

22
23 4. a. There is established a "New Jersey Family College Savings
24 Program" in the Office of Student Assistance to be administered by
25 that office in accordance with the provisions of this act. The office
26 shall develop and maintain a program offering college savings
27 instruments to individuals who desire to plan ahead for college or
28 vocational education. The program shall be structured to permit the
29 long-term accumulation of savings that can be used to finance all or a
30 share of the costs of higher education.

31 b. In connection with the establishment and maintenance of the
32 program, the office shall have the following powers:

33 (1) To develop and implement the program in a manner
34 consistent with the provisions of this act through rules, guidelines, and
35 procedures established in accordance with the "Administrative
36 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.)

37 (2) To retain professional services, if necessary, including
38 accountants and auditors; consultants and other experts; and attorneys;

39 (3) To employ persons and fix the terms of their employment;

40 (4) To seek rulings and other guidance from the United States
41 Department of Treasury and the federal Internal Revenue Service
42 relating to the program;

43 (5) To make changes to the program required for the
44 participants in the program to obtain the federal income tax benefits
45 or treatments provided by section 529 of the federal Internal Revenue
46 Code of 1986, 26 U.S.C. §529, as amended, or any similar successor

1 legislation;

2 (6) To interpret, in rules, policies, guidelines and procedures, the
3 provisions of this act broadly in light of its purposes and objectives;

4 (7) To charge, impose, and collect administrative fees and
5 service charges in connection with any agreement contract or
6 transaction relating to the program; and

7 (8) To select the financial institution or financial institutions to
8 act as the depository and manger of the program in accordance with
9 section 5 of this act.

10 c. The office shall not delegate to any person other than an
11 employee of the office, an employee of the State, or an agency of the
12 State any of its obligations, responsibilities, or powers:

13 (1) That are specifically enumerated under subsection b. of this
14 section other than the power to collect administrative fees; or

15 (2) To monitor the performance or conduct pursuant to
16 subsection d. of section 5 of this act (except that in the conduct of
17 such activity the office or the authority may seek or rely upon reports
18 from independent accounting or actuarial firms).

19

20 5. a. The office shall implement the program through use of a
21 financial institution as an account depository and manger. Under the
22 program, persons may establish accounts through the program at the
23 depository.

24 b. (1) The office shall solicit proposals from financial institutions
25 to act as the depository and manager of the program. Financial
26 institutions that submit proposals will be required to describe the
27 financial instrument which will be held in accounts. Proposals may be
28 made by the sponsor or manager of a State college savings trust, a
29 mutual fund, or other entity, rather than the financial institution itself.

30 (2) The office shall select as program depository and manger the
31 financial institution or financial institutions from among bidding
32 financial institutions that demonstrates the most advantageous
33 combination, both to potential program participants and this State, of
34 the following factors:

35 (a) financial stability and integrity of the financial institution;

36 (b) the safety of the investment instrument being offered
37 (taking into account any insurance provided with respect to such
38 instrument);

39 (c) the ability of the investment instrument to track increasing
40 costs of higher education;

41 (d) the ability of the financial institution (directly or through
42 subcontract) to satisfy record keeping and reporting requirements;

43 (e) the financial institution's plan for promoting the program
44 and the investment it is willing to make to promote the program;

45 (f) the fees, if any, proposed to be charged to persons for
46 opening accounts;

1 (g) minimum initial deposit and minimum contributions that
2 the financial institution will require and the willingness of financial
3 institution to accept contributions through payroll deduction plans; and

4 (h) other benefits to the State or its residents in the proposal,
5 including fees payable to the State to cover expenses of operation of
6 the program.

7 (3) The office shall enter into a contract with a financial
8 institution or with financial institutions, to serve as program manager
9 and depository. Each financial institution participating in the program
10 shall provide only one type of investment instrument.

11 (4) The office may select more than one financial institution and
12 investment instrument for the program if:

13 (a) the federal Internal Revenue Service has provided guidance
14 that giving a contributor choice of more than one investment
15 instrument under a State tuition program will not cause the plan to fail
16 to qualify for favorable tax treatment under section 529 of the federal
17 Internal Revenue Code of 1986, 26 U.S.C. §529; and

18 (b) the office concludes that the choice of investment vehicles
19 is in the best interest of college savers and will not interfere with the
20 promotion of the program.

21 c. A program manager shall:

22 (1) Take all action required to keep the program in compliance
23 with requirements of section 6 of this act and all action not contrary
24 to this act or its contract to manage the program so that it is treated
25 as a "qualified State tuition program" under section 529 of the federal
26 Internal Revenue Code of 1986, 26 U.S.C. §529;

27 (2) Keep adequate records of each account, keep each account
28 segregated from each other account, and provide the office with the
29 information necessary to prepare statements required by subsection j.
30 of section 6 of this act or file such statements on behalf of the office;.

31 (3) Compile and total information contained in statements
32 required to be prepared under subsection i. of section 6 of this act and
33 provide such compilations to the office;

34 (4) If there is more than one program manager, provide the
35 office with such information to assist the authority to determine
36 compliance with subsection h. of section 6 of this act,

37 (5) Provide representatives of the office, including other
38 contractors or other State agencies, access to the books and records
39 of the program manager to the extent needed to determine compliance
40 with the contract; and

41 (6) To hold all accounts in trust for the benefit of the State and
42 the account owners.

43 d. (1) (a) The office may conduct an audit of the operations and
44 financial position of the program manager and depository at any time
45 if the office has any reason to be concerned about the financial
46 position of the program manger and depository, the record keeping

1 practices of the program manager and depository, or the status of
2 accounts.

3 (b) (i.) The office shall require that the program manager and
4 depository be audited at least annually by a firm of certified public
5 accountants selected by the program manager and that the results of
6 such audit be provided to the office.

7 (ii) The program manager shall be required to provide the
8 office with copies of all regulatory filings and reports made by it
9 during the term of the contract or while it is holding any accounts,
10 other than confidential filings or reports that will not become part of
11 the public record. The program manager shall make available for
12 review by the office the results of any periodic examination of the
13 manager by any state or federal banking, insurance, or securities
14 commission, except to the extent that such reports may not be
15 disclosed under applicable law or the rules of such commission.

16 (iii) At least once during the term of any contract with a
17 program manger, the office or an appropriate State agency in
18 consultation with the office shall conduct an examination of the
19 manager and its handling of accounts. Such examination shall be
20 conducted at least biannually if the manager is not subject to periodic
21 examination by a State agency, the Federal Deposit Insurance
22 Corporation or other similar entity.

23 (2) No person shall circulate any description of the Program,
24 whether in writing or through the use of any media, unless such
25 description is first approved by the authority or its designee.

26 e. (1) Any contract described in subsection b. of this section shall
27 be for a term of at least three years and not more than seven years.

28 (2) If a contract described in subsection b. of this section is not
29 renewed, after the end of its term:

30 (a) Accounts previously established and held in investment
31 instruments at such financial institution shall not be terminated;

32 (b) Additional contributions may be made to such accounts;
33 and

34 (c) No new accounts may be placed with such financial
35 institution.

36 (3) The office may terminate a contract with a financial
37 institution at any time for good cause. In such case, the office shall
38 take custody of accounts held at such financial institution and shall
39 seek to promptly transfer the accounts to another financial institution
40 that is selected as a program manager and into investment instruments
41 as similar to the original instruments as possible.

42 f. The office may enter into such other contracts as it deems
43 necessary and proper for the implementation of the program.

44

45 6. a. (1) The program shall be operated through use of accounts.

46 (2) An account may be opened by any person who desires to

1 save to pay the qualified higher education expenses of an individual by:

2 (a) completing an application in the form prescribed by the
3 office, which application shall require:

4 (i.) the name, address and social security number or
5 employer identification number of the contributor;

6 (ii) the name, address and social security number of the
7 account owner if different from the contributor;

8 (iii) the designation of a designated beneficiary;

9 (iv) the name, address, and social security number of the
10 designated beneficiary;

11 (v) the certification relating to no excess contributions
12 required by subsection h. of this section; and

13 (vi) such other information as the authority may require;

14 (b) paying the application fee, if any, established by the
15 authority;

16 (c) making the minimum contribution required by the
17 authority or opening an account; and

18 (d) designating the type of account to be opened if more than
19 one type of account is offered.

20 (3) Any person may make contributions to an account once the
21 account is opened.

22 (4) Contributions to an account may be made only in cash.

23 b. Account owners may withdraw all or part of the balance from an
24 account on 60 days notice, or such shorter period as the office may
25 prescribe, under rules prescribed by the office. Such rules shall
26 include provisions that will generally enable the office or program
27 manager to determine if a withdrawal is a nonqualified withdrawal or
28 a qualified withdrawal. The rules may, but need not, require one or
29 more of the following:

30 (1) account owners seeking to make a qualified withdrawal or
31 other withdrawal that is not a nonqualified withdrawal provide
32 certifications, copies of bills for qualified higher education expenses or
33 other supporting material;

34 (2) qualified withdrawals from an account be made only by
35 check payable jointly to the designated beneficiary and a higher
36 education institution; and

37 (3) withdrawals not meeting certain requirements be treated as
38 nonqualified withdrawals by the program manager and that if such
39 withdrawals are not nonqualified withdrawals, the account owner must
40 seek refunds of penalties directly from the office

41 c. (1) An account owner may change the designated beneficiary of
42 an account to an individual who is a member of the family of the old
43 designated beneficiary in accordance with procedures established by
44 the authority.

45 (2) Upon the direction of an account owner, all or a portion of
46 an account may be transferred to another account of which the

1 designated beneficiary is a member of the family of the designated
2 beneficiary of the transferee account.

3 (3) Changes in designated beneficiaries and rollovers under this
4 subsection shall not be permitted to extent that they would violate: -

5 (a) subsection h. of this section, relating to excess
6 contributions, or

7 (b) subsection f. of this section, relating to investment
8 direction.

9 d. (1) In the case of any nonqualified withdrawal from an account,
10 an amount equal to 5 percent of the portion of the proposed
11 withdrawal that would constitute income as determined in accordance
12 with the principles of section 529 of the federal Internal Revenue Code
13 of 1986, 26 U.S.C.§529, shall be withheld as a penalty and paid to the
14 office.

15 (2) (a) The office shall prescribe an increase in the percentage
16 of the penalty described in paragraph (1) of this subsection or change
17 the base on which such penalty is based if the office determines that
18 the amount of the penalty must be increased to constitute a more than
19 "de minimis" penalty for purposes of qualifying the program as a
20 "qualified State tuition program" under section 529 of the federal
21 Internal Revenue Code of 1986, 26 U.S.C.§529.

22 (b) The office may in its sole discretion decrease the
23 percentage of the penalty described in paragraph (1) of this subsection
24 if it determines that the penalty is greater than is required to constitute
25 a more than "de minimis" penalty for purposes of qualifying the
26 program as a "qualified State tuition program" under section 529 of
27 the federal Internal Revenue Code of 1986, 26 U.S.C.§529.

28 (3) If an account owner makes a nonqualified withdrawal and no
29 penalty amount is withheld pursuant to paragraph (1) of this
30 subsection or the amount withheld was less than the amount required
31 to be withheld under that paragraph for nonqualified withdrawals, the
32 account owner shall pay the unpaid portion of the penalty to the State
33 Treasurer at the same time that the account owner files a gross income
34 tax return for the taxable year of the withdrawal (or if the account
35 owner does not file a return, the due date for a gross income tax
36 return) but in any event on or before the due date for that return
37 (taking into account authorized extensions).

38 e. (1) Each account shall be maintained separately from each other
39 account under the program.

40 (2) Separate records and accounting shall be maintained for each
41 account for each designated beneficiary.

42 f. (1) No contributor to, account owner, or designated beneficiary
43 of any account shall be permitted to direct the investment of any
44 contributions to an account or the earnings thereon.

45 (2) If the office terminates the authority of a financial institution
46 to hold accounts and accounts must be moved from that financial

1 institution to another financial institution, the office shall select the
2 financial institution and type of investment to which the balance of the
3 account is moved unless the federal Internal Revenue Service provides
4 guidance stating that in such conditions allowing the account owner to
5 select among several financial institutions that are then contractors
6 would not cause a plan to cease to be a "qualified State tuition
7 program" for the purposes of section 529 of the federal Internal
8 Revenue Code, 26 U.S.C. § 529.

9 g. An account owner or a designated beneficiary shall not use an
10 interest in an account as security for a loan. Any pledge of an interest
11 in an account shall be of no force and effect.

12 h. (1) The office shall adopt regulations to prevent contributions on
13 behalf of a designated beneficiary in excess of those necessary to pay
14 the qualified higher education expenses of the designated beneficiaries.

15 (2) The rules or regulations adopted under paragraph (1) shall
16 include:

17 (a) procedures for aggregating the total balances of multiple
18 accounts established for a designated beneficiary;

19 (b) establishment of a maximum total balance that may be
20 held in accounts for a designated beneficiary;

21 (c) requirements that persons who contribute to an account
22 certify that to the best of their knowledge that the balance in all
23 "qualified State tuition programs" as defined in section 529 of the
24 Internal Revenue Code of 1986, 26 U.S.C. § 529, of which the
25 designated beneficiary is the designated beneficiary does not exceed
26 the lesser of:

27 (i.) a maximum college savings amount established by the
28 authority from time to time, or

29 (ii) the cost in current dollars of qualified higher education
30 expenses that the contributor reasonably anticipates the designated
31 beneficiary will incur; and

32 (d) requirements that any excess balances with respect to a
33 designated beneficiary be promptly withdrawn in a nonqualified
34 withdrawal or rolled over to another account in accordance with
35 subsection c. of this section.

36 i.. (1) If there is any distribution from an account to any individual
37 or for the benefit of any individual during a calendar year, such
38 distribution shall be reported to the federal Internal Revenue Service
39 and to the account owner or designated beneficiary to the extent
40 required by federal law or regulation.

41 (2) Statements shall be provided to each account owner at least
42 once each year within 31 days of the 12-month period to which they
43 relate. The statement shall identify the contributions made during a
44 preceding 12-month period, the total contributions made through the
45 end of the period, the value of the account as of the end of the period,
46 distributions made during the period and any other matters that the

1 office shall prescribe be reported to the account owner.

2 (3) Statements and information returns relating to accounts shall
3 be prepared and filed to the extent required by federal or State law.

4 j. (1) A State or local government or an organization described in
5 paragraph (3) of subsection (c) of section 501 of the federal Internal
6 Revenue Code of 1986, 26 U.S.C. §501, may open and become the
7 account owner of an account to fund scholarships for persons whose
8 identity will be determined after an account is opened.

9 (2) In the case of any account described in paragraph (1) of this
10 subsection:

11 (a) the requirement that a designated beneficiary be
12 designated when an account is opened shall not apply; and

13 (b) each individual who receives an interest in such account
14 as a scholarship shall be treated as a designated beneficiary with
15 respect to such interest.

16

17 7. a. Any student loan program, student grant program, or other
18 financial assistance program established or administered by the State
19 shall treat the balance in an account of which the student is a
20 designated beneficiary as if it were an asset of the parent of the
21 designated beneficiary and not as a scholarship or grant or as an asset
22 of the student for purposes of determining a student or parent's
23 income, assets or financial need.

24 b. Subsection a. of this section shall apply to any financial
25 assistance program administered by a State supported college or
26 university.

27 c. Subsections a. and b. of this section shall not apply to the extent
28 that:

29 (1) federal law requires all or a portion of the amount in an
30 account to be taken into account in a different manner,

31 (2) federal benefits could be lost if all or a portion of the amount
32 in an account is not taken into account in a different manner, or

33 (3) a specific grant establishing a financial assistance program
34 requires that all or a portion of the amount in an account be taken into
35 account.

36

37 8. a. Nothing in this act shall:

38 (1) give any designated beneficiary any rights or legal interest
39 with respect to account unless the designated beneficiary is the
40 account owner;

41 (2) guarantee that a designated beneficiary will be admitted to
42 a higher education institution;

43 (3) create State residency for an individual merely because the
44 individual is a designated beneficiary; or

45 (4) guarantee that amounts saved pursuant to the program will
46 be sufficient to cover the qualified higher education expenses of a

1 designated beneficiary.

2 b. (1) Nothing in this act shall create or be construed to create any
3 obligation of the office, the authority, the State, or any agency or
4 instrumentality of the State to guarantee for the benefit of any account
5 owner, contributor to an account, or designated beneficiary:

6 (a) the return of any amounts contributed to an account;

7 (b) the rate of interest or other return on any account; or

8 (c) the payment of interest or other return on any account.

9 (2) Under regulations to be adopted by the office, every
10 contract, application, deposit slip, or other similar document that may
11 be used in connection with a contribution to an account shall clearly
12 indicate that the account is not insured by the State and neither the
13 principal deposited nor the investment return is guaranteed by the
14 State.

15

16 9. a. Gross income of a designated beneficiary of the "New Jersey
17 Family College Savings Program" established pursuant to P.L. , c.
18 (C.)(now pending before the Legislature as this bill), or a
19 contributor to that program, shall not include the earnings of amounts
20 invested in that program, except as provided by subsection b. of this
21 section.

22 b. Gross income of a designated beneficiary of the "New Jersey
23 Family College Savings Program," or a contributor to that program,
24 shall include distributions or deemed distributions from that program
25 to the extent that amounts are included in their federal gross income
26 pursuant to section 529 of the federal Internal Revenue Code of 1986,
27 26 U.S.C. §529.

28

29 10. This act shall take effect immediately.

30

31

32

STATEMENT

33

34 This bill establishes the "New Jersey Family College Savings
35 Program" in the New Jersey Office of Student Assistance. The
36 program will provide a vehicle for savings for future payment of higher
37 education costs.

38 The bill authorizes a program in the Office of Student Assistance
39 that allows people to make contributions to an account that is
40 established for the purpose of meeting the qualified higher education
41 expenses of a designated person. The office is responsible for
42 selecting financial institutions that will provide investments and market
43 the program to New Jersey families.

44 The program is designed so that it will qualify as a "qualified State
45 tuition program" under the federal Internal Revenue Code. No amount
46 of investment earnings will be included in the federal taxable income

1 of a contributor to, or beneficiary of, the program with respect to any
2 contribution to, or earnings under, the program. When amounts are
3 distributed from the program for qualified educational expenses, the
4 amount of earnings will be included in the beneficiary's taxable income.
5 The beneficiary (a college student) will probably be taxed at a lower
6 rate than the contributor (in many cases, the student's parents) so less
7 total taxes will be due.

8 The bill also provides an treatment equivalent to the federal
9 treatment under the New Jersey gross income tax, to provide a further
10 incentive for college savings. The administrative costs incurred by the
11 Office of Student Assistance are paid in part by small application fees
12 and fees on non-qualified withdrawals.

13

14

15

16

17 "New Jersey College Savings Plan Act;" provides gross income tax
18 incentives for certain college savings.

[Passed Both Houses]

[Second Reprint]

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 2012

STATE OF NEW JERSEY

ADOPTED JUNE 12, 1997

Sponsored by Senators KYRILLOS, DiFRANCESCO, Kosco,
Bubba, Sinagra, Matheussen, Scott, MacInnes, Inverso,
Assemblymen O'Toole, Rocco, Assemblywoman Crecco,
Assemblymen Jones and Weingarten

1 AN ACT establishing a college savings program and supplementing
2 Titles 18A and 54A 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. Sections 1 through 12 of this act establish a college savings
8 plan and shall be known and may be cited as the "New Jersey Better
9 Educational Savings Trust (NJBEST) Act."

10

11 2. The Legislature finds and declares that:

12 a. This State is committed to making world-class education
13 accessible and affordable for all New Jersey students;

14 b. When families save for college education, they are making an
15 important investment in the future for themselves and the young
16 people of this State;

17 c. Incentives are needed to encourage families to save for college
18 education;

19 d. The "Small Business Job Protection Act of 1996," Pub.L.104-
20 188, amended the federal Internal Revenue Code to provide for
21 favorable tax treatment for qualified college savings programs 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.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SBA committee amendments adopted June 16, 1997.

² Senate floor amendments adopted June 19, 1997.

1 participants in the programs; and

2 e. In addition to favorable federal tax treatment for a college
3 savings program and its participants, it is desirable to provide
4 favorable State tax treatment, as a special incentive for student
5 beneficiaries to attend college in this State.

6

7 3. As used in this act:

8 "Account" means an individual trust account or savings account
9 established in accordance with this act;

10 "Authority" means the New Jersey Higher Education Assistance
11 Authority;

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

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

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

39 "Investment Manager" means the Division of Investment in the
40 Department of the Treasury or the private entities authorized to do
41 business in this State that may be designated by the authority to invest
42 the funds of the trust pursuant to the terms of this act;

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

1 "Nonqualified withdrawal" means a withdrawal from an account
2 other than: a. a qualified withdrawal; b. a withdrawal made as the
3 result of the death or disability of the designated beneficiary of an
4 account; c. a withdrawal made on account of a scholarship (or
5 allowance or payment described in subparagraphs (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.§135) received by the designated
8 beneficiary, but only to the extent of the amount of that scholarship,
9 allowance or payment; d. a rollover or change in designated
10 beneficiary which would not result in a distribution includible in
11 federal gross income under section 529 of the federal Internal
12 Revenue Code of 1986, 26 U.S.C.§529; or e. any other withdrawal if
13 the failure of the program to impose a more than de minimis penalty
14 on the withdrawal would cause the program not to be a qualified State
15 tuition program under section 529 of the federal Internal Revenue
16 Code of 1986, 26 U.S.C.§529;

17 "Program" means the "New Jersey Better Educational Savings
18 Trust (NJBEST) Program" established pursuant to this act;

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

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

30 "Trust" means the "New Jersey Better Educational Savings Trust"
31 established pursuant to section 4 of this act.

32

33 4. There is created within the New Jersey Higher Education
34 Assistance Authority the New Jersey Better Educational Savings
35 (NJBEST) Trust. The trust shall provide a mechanism through which
36 the authority, as trustee, holds accounts established and maintained
37 pursuant to the provisions of this act to finance the cost of qualified
38 higher education expenses.

39

40 5. The Office of Student Assistance shall administer the NJBEST
41 Program established in the authority. The authority shall have the
42 power to:

43 a. serve as trustee of the trust;

44 b. adopt rules and regulations pursuant to the "Administrative
45 Procedures Act," P.L.1968, c.410 (C.52:14B-1 et seq.), necessary to

- 1 carry out the provisions of this act;
- 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. §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 act.
16
- 17 6. Neither the members of the authority, nor any officer or
18 employee of the authority shall be liable personally for the debts,
19 liabilities or obligations of the program established pursuant to this
20 act.
21
- 22 7. a. The authority shall select an investment manager or
23 managers to invest the funds of the trust or the funds in accounts. In
24 making this selection, 'any investment manager shall be subject to the
25 "prudent person" standard of care applicable to the Division of
26 Investment in the Department of the Treasury pursuant to subsection
27 b. of section 11 of P.L. 1950, c. 270 (C. 52:18A-89), and' the authority
28 shall '[promote an investment policy, the objectives of which include
29 minimization of risk, liquidity, and maximization of yield] consider the
30 impact of fees and costs imposed by the manager or managers on yield
31 to contributors' .
- 32 b. The authority may select more than one investment manager
33 and investment instrument for the program if it is in the best interest
34 of contributors and will not interfere with the administration of the
35 program.
- 36 c. The authority may provide a contributor with a choice of
37 investment managers or investment instruments or both for the
38 program if both of the following conditions exist:
- 39 (1) the federal Internal Revenue Service has provided guidance
40 that providing a contributor with a choice of investment managers or
41 instruments under a State tuition program will not cause the program
42 to fail to qualify for favorable tax treatment under section 529 of the
43 federal Internal Revenue Code of 1986, 26 U.S.C. §529; and
- 44 (2) the authority concludes that a choice of 'investment managers
45 or of' investment instruments is in the best interest of contributors

1 and will not interfere with the administration of the program.

2 d. If the authority terminates the designation of an investment
3 manager to hold accounts, and accounts must be moved from that
4 investment manager to another investment manager, the authority shall
5 select the investment manager and type of investment instrument to
6 which the balance of the account is moved, unless the federal Internal
7 Revenue Service provides guidance that allowing the contributor to
8 select among several investment managers or investment instruments
9 that have been selected by the authority would not cause a program to
10 cease to be a qualified State tuition program for the purposes of
11 section 529 of the federal Internal Revenue Code, 26 U.S.C. §529.

12

13 8. a. The program shall be operated as a trust through the use of
14 accounts for designated beneficiaries. An account may be opened by
15 any person who desires to save to pay the qualified higher education
16 expenses of an individual by satisfying each of the following
17 requirements:

18 (1) completing an application in the form prescribed by the
19 authority;

20 (2) paying the one-time application fee established by the
21 authority;

22 (3) making the minimum contribution required by the authority for
23 opening an account;

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

25 (5) in the case of an account to which subsection a. of section 11
26 of this act would apply, demonstrating to the satisfaction of the
27 authority that either the contributor, if an individual, or the designated
28 beneficiary is a New Jersey resident. The requirement of New Jersey
29 residency for either the contributor or the designated beneficiary
30 would not apply to an account to which subsection b. of section 11 of
31 this act would apply unless otherwise determined by the authority;

32 b. Except as provided under section 9 of this act, only the
33 contributor may make contributions to an account after the account is
34 opened.

35 c. Contributions to accounts shall be made only in cash, as defined
36 by the authority pursuant to regulations, in accordance with section
37 529 of the federal Internal Revenue Code of 1986, 26 U.S.C. §529.

38 d. Contributors may withdraw all or part of the balance from an
39 account on sixty days' notice or a shorter period, as may be authorized
40 by the authority pursuant to regulations.

41 e. A contributor may change the designated beneficiary of an
42 account or rollover all or a portion of an account to another account
43 if the change or rollover would not result in a distribution includible
44 in gross income under section 529 of the federal Internal Revenue
45 Code of 1986, 26 U.S.C. §529, in accordance with procedures

1 established by the authority.

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

10 g. If a contributor makes a nonqualified withdrawal and a penalty
11 amount is not withheld pursuant to subsection f. of this section or the
12 amount withheld is less than the amount required to be withheld under
13 that subsection, the contributor shall pay the unpaid portion of the
14 penalty to the authority at the same time that the contributor files a
15 State income tax return for the taxable year of the withdrawal, or if the
16 contributor does not file a return, the unpaid portion of the penalty
17 shall be paid on or before the due date for the filing of that income tax
18 return.

19 h. Each account shall be maintained separately from each other
20 account under the program.

21 i. Separate records and accounting shall be maintained for each
22 account for each designated beneficiary.

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

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

30 l. The maximum contribution for any designated beneficiary shall
31 be determined by the authority pursuant to regulations, in accordance
32 with section 529 of the federal Internal Revenue Code of 1986, 26
33 U.S.C. §529.

34 m. Statements, reports on distributions and information returns
35 relating to accounts shall be prepared, distributed, and filed to the
36 extent required by section 529 of the federal Internal Revenue Code
37 of 1986, 26 U.S.C. §529, or regulations issued thereunder.

38 n. The authority may charge, impose and collect reasonable
39 administrative fees and service charges in connection with any
40 agreement, contract or transaction relating to the program. These fees
41 and charges may be imposed directly on contributors or may be taken
42 as a percentage of the investment earnings on accounts.

43

44 9. a. An amount of no less than \$500 shall be provided by the
45 State for the qualified higher education expenses of a designated

1 beneficiary at the time of a qualified withdrawal provided that:

2 (1) the contributor demonstrates, to the satisfaction of the
3 authority, that the contributor participated in the program for at least
4 four years by making a qualifying minimum initial deposit or qualifying
5 minimum annual contributions, or both, as shall be determined by the
6 authority, for a designated beneficiary;

7 (2) the designated beneficiary demonstrates, to the satisfaction of
8 the authority, attendance or enrollment in a higher education
9 institution in this State, at the time of initial attendance or enrollment
10 in the higher education institution; and

11 (3) either the contributor, if an individual, or the designated
12 beneficiary demonstrates, to the satisfaction of the authority, that the
13 contributor or designated beneficiary is a New Jersey resident.

14 b. The amount provided under subsection a. of this section shall
15 meet the requirements of a qualified scholarship within the meaning of
16 section 117 of the federal Internal Revenue Code of 1986, 26
17 U.S.C. §117, for a designated beneficiary satisfying the requirements
18 of subsection a. of this section.

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

21

22 10. Annually, the authority shall determine a dollar amount of an
23 account, which shall not be less than \$25,000, which shall not be
24 considered in evaluating the financial needs of a student enrolled in an
25 institution of higher education located in the State of New Jersey, or
26 be deemed a financial resource or a form of financial aid or assistance
27 to a student, for purposes of determining the eligibility of a student for
28 any scholarship, grant, or monetary assistance awarded by the State;
29 nor shall the amount of any account as determined by the authority
30 provided for a designated beneficiary under this act reduce the amount
31 of any scholarship grant or monetary assistance which the student is
32 entitled to be awarded by the State.

33

34 11. a. If the investment manager is the Division of Investment in
35 the Department of the Treasury, in order to assure the availability of
36 principal of any amount contributed under this act, there shall be paid
37 to the authority for deposit in the trust, at the time of distribution,
38 subject to appropriation, such sum, if any, as shall be certified by the
39 chairman of the authority as necessary to provide that amount at the
40 time of distribution. The chairman shall make and deliver to the
41 Governor, or his designee, the certificate stating the sums, if any,
42 required to make available in the trust the amount aforesaid, and the
43 sums so certified shall be appropriated and paid to the authority during
44 the then current State fiscal year.

45 b. If the investment manager is a private entity, the investment of

1 the principal ²and interest² of any amount contributed under this act
2 shall be ²backed by the full faith and credit of the United States or be²
3 ¹fully¹ insured by the Federal Deposit Insurance Corporation or other
4 similar insurer backed by the full faith and credit of the United States
5 ¹[up to the maximum amount of insurance normally provided by the
6 insurer]. ~~No account balance shall exceed ²[\$100,000] the~~
7 ~~maximum amount of insurance provided by the insurer². No~~
8 ~~investment is permitted in derivatives of eligible securities, and any~~
9 ~~investment must be designed to balance prospective payments~~
10 ~~according to the guidelines established¹.~~

11

12 12. a. Nothing in this act shall be construed to:

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

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

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

21 b. Nothing in this act establishes any obligation of this State or
22 any agency or instrumentality of this State to guarantee for the benefit
23 of any contributor or designated beneficiary any of the following:

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

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

26 c. Nothing in this act establishes any obligation or liability of this
27 State or any agency or instrumentality of this State with respect to any
28 federal or State tax liability of any contributor or designated
29 beneficiary in this program.

30 d. Under regulations promulgated by the authority, every contract
31 and application that may be used in connection with a contribution to
32 an account shall clearly indicate that the account is not insured by this
33 State nor is the investment return guaranteed by this State.

34

35 13. a. Gross income shall not include the earnings on or
36 distribution from an individual trust account or savings account
37 established pursuant to the "New Jersey Better Educational Savings
38 Trust Program" established pursuant to P.L. , c. (C.)(now
39 pending before the Legislature as this bill).

40 b. "Distribution" means a withdrawal which pays the designated
41 beneficiary's qualified higher education expenses described in section
42 529 of the federal Internal Revenue Code of 1986, 26 U.S.C. §529 or
43 which represents contributions net of earnings thereon.

44

45 14. If the Congress of the United States enacts legislation that

1 exempts educational savings accounts from federal income taxation,
2 sections 9 and 10 of this act shall apply with respect to such
3 educational savings accounts as if they were accounts established
4 under this act and the beneficiaries of the accounts were designated
5 beneficiaries subject to the approval of the New Jersey Higher
6 Education Assistance Authority.

7

8 15. This act shall take effect immediately.

9

10

11

12

13 "New Jersey Better Educational Savings Trust (NJBEST) Act."

STATEMENT TO

[First Reprint]

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 2012

with Senate Floor Amendments
(Proposed By Senator KYRILLOS)

ADOPTED: JUNE 19, 1997

These amendments clarify that under the NJBEST program, a private investment manager may invest in treasury securities or other securities backed by the full faith and credit of the United States; ensure that an account balance will remain fully insured should the federal government revise the Federal Deposit Insurance Corporation insurance limit; and require that if the investment manager is a private entity, the interest on an account, as well as the principal, must be insured.

SENATE EDUCATION COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR SENATE, No. 2012

STATE OF NEW JERSEY

DATED: JUNE 12, 1997

The Senate Education Committee reports favorably a Committee Substitute for Senate Bill No. 2012.

This committee substitute establishes the "New Jersey Better Educational Savings Trust (NJBEST) Program" in the Higher Education Assistance Authority. The program will provide a mechanism to allow families to plan ahead for the costs associated with college attendance and to save funds to meet those future costs. The program will be administered by the Office of Student Assistance.

The program will be operated as a trust through which the authority, as trustee, will hold accounts for designated beneficiaries. Contributors will be allowed to make contributions to an account established for beneficiaries for the purpose of meeting their qualified higher education expenses. The authority will select an investment manager or managers to invest the funds of the trust. The investment manager may be the Division of Investment in the Department of the Treasury or a private entity.

The program is designed so that it will qualify as a "qualified State tuition program" under the federal Internal Revenue Code. No amount of investment earnings will be included in the federal taxable income of a contributor to, or beneficiary of, the program with respect to any contribution to, or earnings under, the program. When amounts are distributed from the program for qualified educational expenses, the amount of earnings will be included in the taxable income of the beneficiary. The beneficiary, as a college student, will most likely be taxed at a lower rate than the contributor, who in many cases will be the student's parents.

In regard to treatment under New Jersey's gross income tax law, the substitute provides that no amount of investment earnings will be included in the taxable income of the contributor to, or earnings under, the program. Unlike the federal tax treatment, however, amounts distributed from the program for qualified educational expenses will not be included in either the beneficiary's or contributor's taxable income.

In regard to the principal amount which a contributor pays into the program, if the investment manager is the Division of Investment in

the Department of Treasury, the substitute stipulates that in order to assure the availability of the principal contribution, there shall be paid to the authority for deposit in the trust, at the time of distribution, such sums as shall be certified by the chairman of the authority as necessary to provide the principal amount. If the investor is a private entity, the investment of the principal amount contributed must be insured by the Federal Deposit Insurance Corporation or other similar entity.

In regard to a designated beneficiary's eligibility for financial aid, the substitute provides that the authority shall determine a dollar amount, of not less than \$25,000, which shall not be considered in evaluating a student's financial need. Also, the amount shall not reduce any State scholarship or monetary assistance to which the student may be entitled.

Finally, the substitute provides that the State will contribute an additional \$500 to the account of a beneficiary who attends an institution of higher education located within the State if the contributor or the beneficiary is a New Jersey resident and the contributor has participated in the program for at least four years.

1-74-901
GSI



OFFICE OF THE GOVERNOR NEWS RELEASE

PO BOX-004

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RELEASE: TUESDAY
Sept. 2, 1997

GOVERNOR MAKES COLLEGE SAVINGS PROGRAM A REALITY

Gov. Christie Whitman today signed legislation to help parents save for their children's college education, creating the New Jersey Better Educational Savings Trust (NJ BEST).

The NJ BEST program, which was first introduced by Gov. Whitman during her State of the State address in January, will enable parents to put money in a tax exempt account toward their children's college education.

"NJ BEST offers New Jersey families a new way to save for college education. Interest through the program will be fully exempt from state taxes and federally tax deferred," said Gov. Whitman. "And, if parents choose to send their kids to one of New Jersey's fine institutions of higher learning, they will receive a \$500 bonus."

NJ BEST will be established in the Higher Education Assistance Authority (HEAA) and administered by the Office of Student Assistance. The program works very much like an individual retirement account. According to recent changes in federal law, the money deposited in the account is not tax deductible, but the earnings are not taxed until the money is withdrawn. At that point, the earnings are taxed at the college student's rate, which is usually lower than the parent's. The NJ BEST account is exempt from state taxes.

The savings program will be handled as a trust using accounts for designated beneficiaries. Participants will make contributions to an account for their beneficiaries' college expenses. The state expects that the trust account will draw higher interest than a regular savings account.

Multiple NJBEST accounts may be set up by family members for the same child.

The HEAA will select an investor or investors to invest the funds of the trust. The investor may be the Division of Investment in the Department of Treasury or a private investor.

The money in the trust, if invested by a private entity, will be fully insured by the FDIC or backed by the United States Government.

The program is expected to be operational in January 1998.

The program also provides a \$500 bonus for students who enter an institution of higher learning in the Garden State. The bonus would apply to those New Jersey residents who have maintained NJ BEST accounts for at least four years.

The legislation, S-2012, was sponsored by Senators Joe Kyrillos (R-Monmouth/Middlesex) and Senate President Donald DiFrancesco (R-Middlesex/Morris/Sussex/Union) and Assembly Members Kevin O'Toole (R-Essex/Union) and John Rocco (R-Camden).