

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

FIRST SPECIAL SESSION-1997

Legislative Document

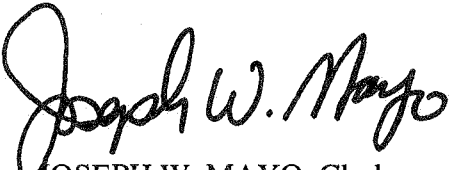
No. 1717

H.P. 1217

House of Representatives, April 1, 1997

An Act Establishing a Higher Education Trust as an Instrumentality of the State.

Reference to the Committee on Education and Cultural Affairs suggested and ordered printed.


JOSEPH W. MAYO, Clerk

Presented by Speaker MITCHELL of Vassalboro.
Cosponsored by Senator PENDLETON of Cumberland and
Representatives: BELANGER of Caribou, DAVIDSON of Brunswick, GAGNON of
Waterville, Senator: KILKELLY of Lincoln.

Be it enacted by the People of the State of Maine as follows:

2
3 **Sec. 1. 10 MRSA §1013, sub-§10**, as amended by PL 1995, c. 462,
4 Pt. A, §17, is further amended to read:

6 **10. Student financial assistance counseling and outreach**
7 **program.** The student financial assistance counseling and
8 outreach program, as established in Title 20-A, chapter 430-B; and

10 **Sec. 2. 10 MRSA §1013, sub-§13**, as amended by PL 1991, c. 824,
11 Pt. C, §1, is further amended to read:

12 **13. Higher Education Loan Program.** The Higher Education
13 Loan Program as established in Title 20-A, chapter 417-C; and

14 **Sec. 3. 10 MRSA §1013, sub-§14** is enacted to read:

15 **14. Maine University Savings Trust.** The Maine University
16 Savings Trust as established in Title 20-A, chapter 437.

17 **Sec. 4. 10 MRSA §1016, sub-§1**, as amended by PL 1995, c. 519,
18 §4, is further amended to read:

19 **1. Membership of board.** The Maine Education Assistance
20 Board, as established in Title 5, section 12004-I, subsection
21 18-A, consists of 7 8 voting members. One member is the
22 Commissioner of Education or the commissioner's designee, who
23 must be a person in a major policy influencing position and one
24 member is the Treasurer of State. The Governor shall appoint 6
25 members. The gubernatorial appointees consist of the following.

26 A. One member must be a trustee, director, officer or
27 employee of an institution of higher education in the State.

28 B. One member must be a member of a statewide organization
29 representing the chief executive officers of public and
30 private postsecondary institutions in the State.

31 C. One member must be a student financial aid administrator
32 at a postsecondary institution in the State.

33 D. One member must be a guidance counselor at a high school
34 in the State.

35 E. One member must be a representative of a state financial
36 institution that is active in student lending.

37 F. One member must represent the interests of students,
38 parents and other members of the public who use the programs.

2 With respect to the appointees specified in paragraphs A and B,
3 one shall ~~member~~ must be from an institution not owned or
4 operated by the State or any of its political subdivisions and
5 one shall must be from a public institution of postsecondary
6 education.

7 **Sec. 5. 20-A MRSA c. 437** is enacted to read:

8 **CHAPTER 437**

10 **MAINE UNIVERSITY SAVINGS TRUST ACT**

12 **§12901. Short title**

14 This chapter is known and may be cited as the "Maine
16 University Savings Trust Act."

18 **§12902. Definitions**

20 As used in this chapter, unless the context otherwise
22 indicates, the following terms have the following meanings.

24 1. Authority. "Authority" means the Finance Authority of
26 Maine.

28 2. College savings fund. "College savings fund" means the
30 fund established pursuant to section 12905, subsection 4.

32 3. Depositor. "Depositor" means any person making a
34 deposit, payment, contribution or gift to the trust that is not
36 included under a prepaid tuition contract.

38 4. Designated beneficiary. "Designated beneficiary" means
40 an individual resident of the State identified as a beneficiary
42 in a participation agreement or an individual resident of the
44 State or nonresident identified as a beneficiary in a prepaid
46 tuition contract. "Designated beneficiary" also means:

48 A. An individual designated at the time of the original
enrollment in the college savings fund or upon the execution
of the prepaid tuition contract;

B. Any other individual subsequently designated who is a
family member as defined in the federal Internal Revenue
Code of 1986, Section 529;

C. An individual receiving a scholarship from interests in
the trust purchased by a state or local government or an
organization described in the federal Internal Revenue Code

2 of 1986, Section 501(c)(3), as amended and qualified under
the federal Internal Revenue Code, Section 529; or

4 D. Any other designated beneficiary qualifying under the
6 federal Internal Revenue Code of 1986, Section 529.

8 5. Eligible educational institution. "Eligible educational
institution" means an institution of higher education qualifying
10 under the federal Internal Revenue Code of 1986, Section 529 as
an eligible educational institution.

12 6. Participation agreements. "Participation agreements"
14 means agreements with depositors for participation in the college
savings fund.

16 7. Prepaid tuition contract. "Prepaid tuition contract"
18 means an agreement contract by and among the trust and eligible
educational institution offering a higher education program
20 within the State and a purchaser providing for the advance
payment of qualified higher education expenses or any component
22 or unit of qualified higher education based upon credit hours or
otherwise at a fixed, guaranteed level on or after a future date
24 specified in the contract.

26 8. Prepaid tuition fund. "Prepaid tuition fund" means the
fund established pursuant to section 12905, subsection 5.

28 9. Prepaid tuition program. "Prepaid tuition program"
30 means a program of the trust and an eligible educational
institution within the State offering and accepting prepaid
32 tuition contracts.

34 10. Purchaser. "Purchaser" means a person who makes a
payment or is obligated to make advance payments toward qualified
36 higher education expenses in accordance with a prepaid tuition
contract pursuant to this chapter.

38 11. Qualified higher education expenses. "Qualified higher
40 education expenses" means tuition, fees, books, supplies and
equipment required for the enrollment or attendance of a
42 designated beneficiary at an eligible educational institution,
including undergraduate and graduate schools, and any other
44 higher education expenses that may be permitted by the federal
Internal Revenue Code of 1986, Section 529.

46 12. Trust. "Trust" means the Maine University Savings
48 Trust created as an instrumentality of the State.

50 §12903. Maine University Savings Trust; established

2 The Maine University Savings Trust is established to promote
3 and enhance the affordability and accessibility of higher
4 education for residents of the State and nonresidents who desire
5 to attend an eligible educational institution situated within the
6 State. The trust constitutes an instrumentality of the State and
7 performs essential governmental functions as provided in this
8 chapter.

9
10 1. Trust to hold funds. The trust shall hold all payments
11 received toward a prepaid tuition contract, proceeds from the
12 sale of tuition credits and deposits or contributions for savings
13 intended for the college savings fund, as well as gifts,
14 bequests, endowments or grants from the Federal Government, the
15 State, any state or federal agency and any other public or
16 private source of funds and interest earned on those funds.

17
18 2. Funds not property of State. The amounts on deposit in
19 the trust may not constitute or be considered property of the
20 State. The trust may not be construed as a department, an
21 institution or agency of the State. Amounts on deposit in the
22 trust may not be commingled with state funds and the State may
23 not have claim to or against, or interest in those funds. Any
24 contract entered into or obligation of the trust is an obligation
25 of the trust only and does not constitute a debt or obligation of
26 the State and the State has no obligation to any direct
27 beneficiary or any other person on account thereof and all
28 amounts obligated to be paid from the trust must be limited to
29 amounts available on deposit in the trust. The amounts on
30 deposit in the trust may only be disbursed in accordance with the
31 provisions of this chapter. The trust continues in existence as
32 long as it holds any deposits or has any obligations and until
33 its existence is terminated by law. Upon termination of the
34 existence of the trust, all rights and properties must pass to
35 and be vested in the State.

36 3. Authority acting on behalf of trust. Members of the
37 authority serve as trustees for the trust and possess all the
38 authority and power provided in this chapter necessary to effect
39 the purposes of the trust.

40 §12904. Powers of the trust

41
42 1. Powers of the authority. For purposes of the trust, the
43 authority may:

44
45 A. Receive, maintain, administer and disburse funds of the
46 trust:

2 B. Invest money in the trust in any instruments,
4 obligations, securities or property in accordance with
6 section 12908;

8 C. Develop requirements, procedures and guidelines
10 regarding the terms of the participation agreements and
12 prepaid tuition contracts, including, but not limited to,
14 residency requirements when applicable, the termination,
16 withdrawal or transfer of payments under the trust and time
18 limitations for the application of the amounts held in the
20 trust;

22 D. Enter into one or more contractual agreements, including
24 contracts for legal, actuarial, accounting, custodial,
26 advisory, management, administrative, advertising, marketing
28 and consulting services for the trust;

30 E. Procure insurance against any loss in connection with
32 the fund's property, assets or activities and indemnifying
34 members of the authority from personal loss or
36 accountability from liability arising from any action or
38 inaction as a member of the authority;

40 F. Enter into prepaid tuition contracts with any eligible
42 educational institution;

44 G. Apply for, accept and expend gifts, grants or donations
46 from public or private sources to enable it to carry out its
48 objectives;

50 H. Adopt rules and procedures and perform any act or
function consistent with the purposes of this chapter;

I. Sue and be sued;

J. Make necessary arrangements for payroll deduction, bank
account automatic deduction from the accounts of depositors
or purchasers or any form of installment plan of
contribution;

K. Contract to offer life insurance on purchasers in
connection with prepaid tuition contracts or any depositor
for payment to the trust of any claims or benefits paid from
that insurance; and

L. Take other action necessary or convenient to carry out
the purposes of this chapter.

§12905. Funds; establishment of the funds

1 1. Separate trust funds. There following 3 separate funds
2 are established within the trust:

4 A. The college savings fund;

6 B. The prepaid tuition fund; and

8 C. The trust expense fund.

10 Unless otherwise specified by the contributor or the originator
12 of the offer or as a condition precedent to the offer, any gifts,
14 grants, bequests or endowments are credited to the college
16 savings fund unless otherwise directed by the authority.

18 2. Cash deposits. The trust may not receive deposits in
20 any form other than cash. Earnings on amounts on deposit in each
22 fund must be credited to and deposited into that respective fund.

24 3. Penalty for withdrawal. If the amounts on deposit in
26 the college savings fund or prepaid tuition fund are not applied
28 to qualified higher education expenses, are refunded upon the
30 death or certified disability of the designated beneficiary or
32 are otherwise withdrawn from the trust, the application of those
34 amounts by the trust are subject to a significant penalty in the
36 form of the withholding of a percentage of the earnings
38 attributable to the account or subaccount of that designated
40 beneficiary within either fund with that percentage specified by
42 the authority. The amount derived from such a penalty must be
44 retained in the trust and applied as directed by the authority.

46 4. College savings fund. For credit to the college savings
48 fund, the authority receives, on behalf of any designated
50 beneficiary who is a resident of the State, all deposits,
52 contributions and payments received pursuant to a participation
54 agreement or received otherwise than pursuant to a prepaid
56 tuition contract. For each designated beneficiary within the
58 college savings fund there is a separate account.

60 A. The authority may not accept contributions in excess of
62 those amounts reasonably necessary for estimated qualified
64 higher education expenses for the designated beneficiary,
66 including those amounts necessary for the enrollment in any
68 type of graduate education program.

70 5. Prepaid tuition fund. There are separate accounts
72 established within the prepaid tuition fund for each eligible
74 educational institution offering a higher education program
76 within the State and offering prepaid tuition contracts. The
78 authority shall cooperate with each eligible educational
80 institution desiring to offer prepaid tuition contracts to

2 establish a prepaid tuition program and shall publicize and
3 promote the availability of that program to all interested
4 parties. The authority, in conjunction with the eligible
5 educational institution, shall determine the terms, details and
6 provisions of the prepaid tuition contracts. Within each
7 account, there is established a subaccount for each designated
8 beneficiary who is enrolled in a prepaid tuition contract.

9
10 A. Any earnings credited to a designated beneficiary
11 enrolled in a prepaid tuition contract must be paid to the
12 eligible educational institution following enrollment of the
13 designated beneficiary in the eligible educational
14 institution in accordance with the prepaid tuition contract.

15
16 B. If the designated beneficiary elects not to apply to the
17 eligible educational institution or upon decline of
18 admission of the designated beneficiary to the eligible
19 educational institution, amounts credited to the subaccount
20 of the designated beneficiary, less a reasonable penalty as
21 determined by the authority for administrative expenses
22 incurred by the trust and the eligible educational
23 institution, must be transferred to the college savings fund
24 or otherwise made available to the designated beneficiary
25 for application to qualified higher education expenses at
26 any other eligible educational institution.

27
28 C. Each prepaid tuition program is subject to an annual
29 actuarial analysis and review by an individual or firm of
30 favorable repute in the field of actuarial services,
31 retained by the authority. The analysis and review must be
32 conducted in conjunction and cooperation with the eligible
33 educational institution. Once completed, a report on the
34 actuarial analysis and review must be furnished to the
35 authority and the eligible educational institution. If the
36 analysis reveals that the prepaid tuition program is not
37 actuarially sound, the report must provide recommendations
38 to address the deficiency. If the authority concurs with
39 the report, the authority may not elect to continue to offer
40 prepaid tuition contracts for any such eligible educational
41 institution unless the institution has indicated and
42 demonstrated an ability and willingness to cooperate with
43 the trust to follow the recommendations or otherwise ensure
44 actuarial soundness.

45
46 6. Trust expense fund. The authority may credit to the
47 trust expense fund from earnings and gains on amounts on deposit
48 in the college savings fund and the prepaid tuition fund amounts
necessary to pay the reasonable expenses incurred in the
operation of the trust. The annual expenses of the trust may not

2 exceed 2 1/2% per annum of the average assets on deposit in the
trust during a fiscal year.

4 **§12906. College savings fund participation agreements; terms;
6 termination**

8 The trust has the authority to accept applications from, and
enter into participation agreements with, depositors on behalf of
designated beneficiaries. A participation agreement must include
10 the following terms and provisions:

12 1. Estimated higher education expense. An estimate of
qualified higher education expenses based upon expenses at one or
14 more eligible educational institutions that the designated
beneficiary may attend;

16 2. Payment terms and conditions. The terms and conditions
18 under which purchasers must remit payments, including the dates
of those payments;

20 3. Withdrawal provisions. Provisions for withdrawals,
22 refunds and any penalties;

24 4. Designated beneficiary. The name and date of birth of
the designated beneficiary on whose behalf the prepaid tuition
26 contract is made;

28 5. Substitution. Terms and conditions for a substitution
for the designated beneficiary originally named;

30 6. Termination. Terms and conditions for termination of
32 the participation agreement, including any refunds, withdrawals
or transfers of tuition prepayments and the name of the person or
34 persons entitled to terminate the prepaid tuition contract;

36 7. Time period. The time period during which the
designated beneficiary may seek application of funds on deposit
38 in their respective account in the college savings fund;

40 8. Rights and obligations. All other rights and
obligations of the depositor, the designated beneficiary and the
42 trust; and

44 9. Terms and conditions. Any other terms and conditions
that the authority determines necessary.

46 **§12907. Prepaid tuition contracts; terms; termination**

48

2 The trust may accept applications from, and enter into
3 prepaid tuition contracts with, purchasers. Prepaid tuition
4 contracts must include the following terms and provisions:

5 1. Payment amounts. The amount of payment or payments and
6 the number of payments required from a purchaser on behalf of a
7 designated beneficiary;

8 2. Credit hours. The number of credit hours of quarters,
9 semesters or terms contracted for by the purchaser;

10 3. Payment terms and conditions. The terms and conditions
11 under which purchasers must remit payments, including the dates
12 of those payments;

13 4. Provisions. Provisions for late payment charges,
14 defaults, withdrawals, refunds and any penalties;

15 5. Designated beneficiary. The name and date of birth of
16 the designated beneficiary on whose behalf the contract is made;

17 6. Substitution. Terms and conditions for a substitution
18 for the designated beneficiary originally named;

19 7. Termination. Terms and conditions for termination of
20 the prepaid tuition contract, including any refunds, withdrawals
21 or transfers of tuition prepayments and the name of the person or
22 persons entitled to terminate the prepaid tuition contract;

23 8. Time period. The time period during which the
24 designated beneficiary may claim benefits from the prepaid
25 tuition fund;

26 9. Rights and obligations. All other rights and
27 obligations of the purchaser, the designated beneficiary and the
28 trust; and

29 10. Terms and conditions. Any other terms and conditions
30 that the authority determines necessary.

31 **§12908. Investment and management of funds**

32 The authority shall invest the amounts on deposit in the
33 trust in a reasonable manner to achieve the objectives of each
34 fund, exercising the discretion and care of a prudent person in
35 similar circumstances with similar objectives. A depositor,
36 purchaser or designated beneficiary may not direct the investment
37 of any amounts on deposit in the trust. The authority shall give
38 due consideration to rate of return, risk, term or maturity,
39 diversification of the total portfolio within the fund,
40

2 liquidity, the projected disbursements and expenditures and the
4 expected payments, deposits, contributions and gifts to be
6 received. The trust may not be invested directly or indirectly
8 in any one asset category that constitutes more than 80% of the
10 total amounts on deposit in that asset category. The authority
12 may not require the trust to invest directly in obligations of
14 the State or any political subdivision of the State or in any
16 investment or other fund administered by the authority provided
18 that the investment is not more than 15% of total amounts on
20 deposit in any such investment by the trust if determined
22 appropriate and desirable for purposes of the trust and if
24 approved by the authority. The assets of the trust must be
26 invested continuously in a manner consistent with the objectives
28 of the trust until disbursed for qualified educational expenses,
30 expended on expenses incurred by the operations of the trust or
32 refunded to the purchaser or designated beneficiary on the
34 conditions provided in this chapter.

36 **§12909. Exemption from registration**

38 All prepaid tuition contracts and participation agreements
40 are exempt from Title 32, sections 10401 to 10503. The authority
42 shall obtain written advice of legal counsel or written advice
44 from the Securities and Exchange Commission, or both, that the
46 trust and the offering of participation agreements or prepaid
48 tuition contracts are not subject to federal securities laws.

50 **§12910. Annual audited financial report**

52 The authority shall submit an annual audited financial
54 report prepared by an independent certified public accounting
56 firm on the operations of the trust, including the receipts,
58 disbursements, assets, investments and liabilities, to the
60 Governor and each eligible educational institution offering
62 prepaid tuition contracts within 120 days of the end of the
64 fiscal year of the trust. This report must be made available to
66 each depositor, purchaser and designated beneficiary.

68 **§12911. Tax exemption**

70 The funds held in the trust, the income of the trust earned
72 from operations and the property of the trust are exempt from all
74 taxation by the State and all of the State's political
76 subdivisions.

78 **§12912. Pledge by State to depositors, purchasers and**
80 **designated beneficiaries**

82 The State pledges to and agrees with depositors, purchasers,
84 designated beneficiaries and with those parties who may enter

2 into prepaid tuition contracts with the trust pursuant to the
3 provisions of this chapter that the State may not limit or alter
4 the rights vested in the trust until those obligations are fully
5 met and discharged and those prepaid tuition contracts are fully
6 performed on the part of the trust, provided that the prepaid
7 tuition contract does not preclude the limitation or alteration
8 of the rights vested in the trust, if and when adequate provision
9 is made by law for the protection of the obligations of the trust
10 of those depositors, purchasers and designated beneficiaries or
11 those entering into those prepaid tuition contracts with the
12 trust. The trust as agent for the State may include this pledge
13 and undertaking for the State in those obligations or contracts.

14 **§12913. Admission not guaranteed**

16 This section or any prepaid tuition contract or college
17 savings fund enrollment does not constitute or is not considered
18 an agreement, pledge, promise or guarantee of admission or
19 continued enrollment of any designated beneficiary or any other
20 person to any eligible educational institution or any other
21 institution of higher education.

22 **§12914. Compliance**

24 The authority may take any action necessary to ensure that
25 the trust complies with the federal Internal Revenue Code of
26 1986, Section 529 and other applicable laws, rules and
27 regulations to the extent necessary for the trust to constitute a
28 prepaid tuition program and is exempt from taxation under the
29 federal Internal Revenue Code of 1986, Section 529.

32

SUMMARY

34

35 The purpose of this bill is to establish a higher education
36 trust to assist residents of the State in saving for the costs of
37 attending higher education and to assist students in the payment,
38 in advance, of the tuition and related costs of attending
39 colleges and universities in the State. This bill establishes
40 the Maine University Savings Trust as an instrumentality of the
41 State and accomplishes the following.

42

43 1. It provides assistance and incentives for saving toward
44 higher education costs and for the purchase of prepaid tuition
45 contracts for the benefit of the children of this State to attend
46 a qualified institution of higher education in the State.

48

49 2. It encourages timely financial planning for higher
50 education by the creation of prepaid tuition contracts and
further encourages employer participation in that planning.

2 3. It will increase the number of qualified students who
3 will seek to attend colleges and universities in Maine, which
4 will be of benefit to the colleges and universities, and will
5 therefore advance and improve higher education in the State.

6 Under this bill, members of the Finance Authority of Maine
7 serve as trustees for the Maine University Savings Trust and act
8 on behalf of the trust to establish and administer the separate
9 trust funds.