

# MAINE STATE LEGISLATURE

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# 118th MAINE LEGISLATURE

## FIRST SPECIAL SESSION-1997

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Legislative Document

No. 1718

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H.P. 1218

House of Representatives, April 1, 1997

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### An Act to Create a Prepaid Tuition Plan.

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

A handwritten signature in cursive script that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative KONTOS of Windham.  
Cosponsored by Senator CATHCART of Penobscot, Representative MARVIN of Cape Elizabeth and Senator AMERO of Cumberland and Representatives: BRENNAN of Portland, LaVERDIERE of Wilton, MURPHY of Kennebunk, RICHARD of Madison, SAXL of Bangor, SAXL of Portland, Senators: RAND of Cumberland, RUHLIN of Penobscot.

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

4 Sec. 1. 20-A MRSA c. 430-C is enacted to read:

6 CHAPTER 430-C

8 MAINE PREPAID TUITION SAVINGS ACT

10 §12681. Short title

12 This chapter is known and may be cited as the "Maine Prepaid Tuition Savings Act."

14 §12682. Definitions

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

18 1. Accredited institution. "Accredited institution" means  
20 a nationally accredited 2-year or 4-year institution of higher education.

22 2. Advance tuition payment contract. "Advance tuition  
24 payment contract" means a contract entered into under the plan by  
26 the authority and a purchaser pursuant to this Act to provide for  
the higher education of a qualified beneficiary.

28 3. Authority. "Authority" means the Finance Authority of  
30 Maine.

32 4. Chief executive officer. "Chief executive officer"  
means the Chief Executive Officer of the Finance Authority of  
34 Maine.

36 5. Federal Act. "Federal Act" means Section 529 of the  
Internal Revenue Code of 1986, as amended, and any successor or  
38 related provision of federal law providing for qualified state  
tuition programs.

40 6. Fund. "Fund" means the Advance Tuition Payment Fund  
42 created in section 12689.

44 7. Plan. "Plan" means the Maine Prepaid Tuition Savings  
Plan created in section 12683.

46 8. Purchaser. "Purchaser" means a person who makes or is  
48 obligated to make advance tuition payments pursuant to an advance  
tuition payment contract.

2 9. Qualified beneficiary. A "qualified beneficiary" is a  
person for whose benefit a purchaser enters into a contract under  
4 the plan who is a resident of the State at the time the contract  
is entered into.

6 10. Settlement sum. "Settlement sum" means the sum of  
money the purchaser is entitled to at the termination of the  
8 advance tuition payment contract.

10 11. State institution of higher education. "State  
institution of higher education" means a college or university  
12 described in Private and Special Law 1865, chapter 532, or any  
2-year or 4-year degree-granting institution established by the  
14 State after the effective date of this Act that is designated by  
the State as a state institution of higher education for purposes  
16 of this Act.

18 **§12683. Maine Prepaid Tuition Savings Plan**

20 1. Maine Prepaid Tuition Savings Plan. The Maine Prepaid  
Tuition Savings Plan is established to be administered by the  
22 authority.

24 2. Powers and duties. All necessary powers and duties for  
the administration and implementation of the plan are vested in  
26 the authority.

28 3. Compliance with Federal Act. The authority shall take  
any action necessary to ensure that the plan complies with the  
30 Federal Act and other applicable laws, rules and regulations to  
the extent necessary for the plan to constitute a qualified state  
32 tuition program and to be exempt from taxation under the Federal  
Act.

34 **§12684. Advance tuition payment contract**

36 The authority, on behalf of the plan and the State, may  
38 contract with a purchaser for the advance payment of tuition by  
the purchaser for a qualified beneficiary to attend a state  
40 institution of higher education to which the qualified  
beneficiary is admitted, without further tuition cost to the  
42 qualified beneficiary.

44 1. Advance tuition payment contract. An advance tuition  
payment contract must set forth all of the following:

46 A. The amount of the payment or payments required from the  
48 purchaser on behalf of the qualified beneficiary;

50 B. The terms and conditions for making the payment,  
including, but not limited to, the date or dates upon which

2 the payment, or portions of the payment, are due and that  
3 payments may be made only in cash;

4 C. Provisions for late payment charges and for default;

6 D. The name and age of the qualified beneficiary under the  
7 contract. The purchaser, with the approval of and on  
8 conditions determined by the authority, may subsequently  
9 substitute another person for the qualified beneficiary  
10 originally named only if the new beneficiary is a member of  
11 the family of the original beneficiary;

12 E. The name of the person entitled to terminate the  
13 contract, which, as provided by the contract, may be the  
14 purchaser, the qualified beneficiary or a person to act on  
15 behalf of the purchaser or qualified beneficiary, or any  
16 combination of these persons;

17 F. The terms and conditions under which the contract may be  
18 terminated and the amount of the refund, if any, to which  
19 the person terminating the contract, or specifically the  
20 purchaser or designated qualified beneficiary, if the  
21 contract so provides, is entitled upon termination;

22 G. The assumption of a contractual obligation by the  
23 authority to the qualified beneficiary on its own behalf and  
24 on behalf of the State to provide for credit hours of higher  
25 education, not to exceed the credit hours required for the  
26 granting of a baccalaureate degree, at a state institution  
27 of higher education to which the qualified beneficiary is  
28 admitted. The contract must establish the number of credit  
29 hours of higher education that a qualified beneficiary may  
30 receive under the contract if the qualified beneficiary is  
31 not entitled to in-state tuition rates;

32 H. The period of time during which the qualified  
33 beneficiary may receive the benefits under the contract; and

34 I. Other terms, conditions and provisions as the fund  
35 considers in its sole discretion to be necessary or  
36 appropriate.

37 2. Form approved. The authority shall approve the form of  
38 an advance tuition payment contract to be offered under the plan.

39 3. Separate accounting. The authority shall provide  
40 separate accounting for each qualified beneficiary.

41

2 4. No investment direction. The purchaser and qualified  
3 beneficiary of an advance tuition payment contract may not direct  
4 the investment of any payment or earnings.

6 5. No pledging of interest as security. No interest in an  
7 advance tuition payment contract or any portion of the interest  
8 may be used as security for a loan.

10 6. Necessary arrangements. The authority shall make any  
11 arrangements that are necessary or appropriate with state  
12 institutions of higher education in order to fulfill its  
13 obligations under advance tuition payment contracts, which may  
14 include, but are not limited to, the payment by the program of  
15 the actual in-state tuition cost on behalf of a qualified  
16 beneficiary to the state institution of higher education.

18 7. Community or junior college attendance. An advance  
19 tuition payment contract must provide that the plan allows for  
20 the qualified beneficiary to attend an accredited technical,  
21 community or junior college before entering an accredited  
22 institution of higher education if the beneficiary chooses and  
23 that the contract may be terminated pursuant to section 12686  
24 after the qualified beneficiary completes the requirements for a  
25 degree at the technical, community or junior college or before  
26 entering the state institution of higher education.

28 8. Rights terminated. An advance tuition payment contract  
29 may provide that if, after a number of years specified in the  
30 contract, the contract has not been terminated or the qualified  
31 beneficiary's rights under the contract have not been exercised,  
32 the authority shall retain the amounts otherwise payable and the  
33 rights of the qualified beneficiary, the purchaser or the agent  
34 of either must be considered terminated.

36 9. Transfer. A provision in this section may not prohibit  
37 a purchaser from directing the authority to transfer the  
38 settlement value to any accredited institution pursuant to  
39 section 12685.

40 **§12685. Contracts**

42 At a minimum, the authority must offer contracts of the 2  
43 types set forth in this section.

46 1. Plan A. Under Plan A, a payment or series of payments  
47 is required from the purchaser on behalf of a qualified  
48 beneficiary. Plan A provides:

50 A. For the qualified beneficiary to attend a state  
51 institution of higher education at which the qualified

2 beneficiary attends for the number of credit hours required  
3 by the institution for the awarding of a baccalaureate  
4 degree, without further tuition cost to the qualified  
5 beneficiary, except as provided in section 12684 for a  
6 qualified beneficiary who is not entitled to in-state  
7 tuition rates; or

8 B. That a settlement sum be paid either to the purchaser  
9 directly or to an accredited institution of the purchaser's  
10 choice. For the purposes of Plan A, if the purchaser elects  
11 to receive the settlement sum directly, the settlement sum  
12 consists only of the face amount of the payment or payments.

14 2. Plan B. Under Plan B, a payment or series of payments  
15 is required from the purchaser on behalf of a qualified  
16 beneficiary. Plan B provides:

18 A. For the qualified beneficiary to attend a state  
19 institution of higher education at which the qualified  
20 beneficiary attends for the number of credit hours required  
21 by the institution for the awarding of a baccalaureate  
22 degree, without further tuition cost to the qualified  
23 beneficiary, except as provided in section 12684 for a  
24 qualified beneficiary who is not entitled to in-state  
25 tuition rates; or

26 B. That a settlement sum be paid either to the purchaser  
27 directly or to an accredited institution of the purchaser's  
28 choice. For the purposes of Plan B, if the purchaser elects  
29 to receive the settlement sum directly, the settlement sum  
30 consists of the face amount of the payment or payments and  
31 any additional interest earned on the amount of these  
32 payments at a rate of interest to be determined by the terms  
33 of the contract.

36 3. Qualified beneficiary. If the qualified beneficiary  
37 chooses not to attend a state institution under Plan A or Plan B,  
38 the purchaser may direct the authority to transfer the amount the  
39 purchaser would receive as a settlement sum, on behalf of the  
40 qualified beneficiary, to an accredited institution of the  
41 purchaser's choice. The settlement sum, if transferred to an  
42 accredited institution that is not a state institution, may not  
43 exceed the total amount of tuition charged at the state  
44 institution that charges the highest rate of tuition.

46 Contracts required to be offered by this section may require  
47 that payment or payments from a purchaser on behalf of a  
48 qualified beneficiary who may attend a state institution of  
49 higher education in less than 4 years after the date the contract

is entered into by the purchaser be based upon attendance at a state institution of higher education or at that state institution of higher education with the prevailing tuition cost for the number of credit hours covered by the contract.

**§12686. Authorized termination**

An advance tuition payment contract may not be terminated except when one of the following occurs:

**1. Death.** The qualified beneficiary dies;

**2. No admittance.** The qualified beneficiary is not admitted to a state institution of higher education or an accredited institution after making proper application; or

**3. Certification.** The qualified beneficiary certifies to the authority, after attaining the age of 25 years, that the beneficiary has decided not to attend a state institution of higher education or any accredited institution and requests, in writing, that the advance tuition payment contract be terminated. The certification must be signed by at least one purchaser.

Termination is possible under certain other conditions pursuant to rules adopted by the authority. However, the right to terminate an advance tuition payment contract may not be authorized if the qualified beneficiary has completed more than 1/2 of the credit hours required by the state institution of higher education for the awarding of a baccalaureate degree. This provision does not affect the termination and refund rights of a graduate of a technical, community or junior college.

**§12687. Settlement sum**

An advance tuition payment contract may provide for a refund, pursuant to this section, to a person to whom the settlement sum is payable under the contract upon termination of the contract. The settlement sum must be calculated pursuant to Plan A or Plan B under section 12685.

**1. Amount not to exceed.** The amount of a refund may not exceed the prevailing tuition cost on the date of termination for the credit hours covered by the contract at the state institution of higher education that charges the highest rate of tuition.

**2. Amount of refund.** The amount of a refund must be reduced by the amount transferred to a technical, community or junior college on behalf of a qualified beneficiary when the



2 contract is terminated as provided in section 12684, subsection  
4 4, and by the amount transferred to a state institution of higher  
6 education on behalf of a qualified beneficiary.

8 **§12688. Direct payment of the settlement sum**

10 An advance tuition payment contract may authorize a person  
12 who is entitled under the advance tuition payment contract to  
14 terminate the contract to direct payment of the settlement sum,  
16 pursuant to restrictions set forth in section 12685, subsection  
18 3, to an independent accredited degree-granting college or  
20 university or to a technical, community or junior college.

22 **1. Transfer.** If directed to make payments pursuant to this  
24 subsection, the authority shall transfer to the designated  
26 institution an amount equal to the tuition due for the qualified  
28 beneficiary. The authority may not transfer a cumulative amount  
30 greater than the current tuition at the state institution of  
32 higher education that charges the highest rate of tuition.

34 **2. Limit on settlement sum.** The amount of a settlement sum  
36 paid upon termination of the advance tuition payment contract by  
38 a person who directs the authority, pursuant to this section, to  
40 transfer the settlement sum to any accredited independent  
42 degree-granting college or university may not exceed the cost of  
44 tuition at the campus of the state institution of higher  
46 education with the highest tuition rate.

48 **§12689. Advance Tuition Payment Fund**

50 There is created under the jurisdiction and control of the  
52 authority the Advance Tuition Payment Fund. Payments received by  
54 the plan from purchasers on behalf of qualified beneficiaries or  
56 from any other source, public or private, must be placed in the  
58 fund. The fund may be divided into separate accounts.

60 **1. Assets not considered state money.** Assets of the fund  
62 may not be considered assets of the State or state revenue.

64 **2. Expending of assets.** Unless otherwise provided by  
66 resolution of the authority, assets of the plan may be expended  
68 for 4 purposes:

70 **A.** To make payments to state institutions of higher  
72 education or to a technical, community or junior college on  
74 behalf of qualified beneficiaries;

76 **B.** To make payments to an accredited independent  
78 degree-granting college or university on behalf of qualified  
80 beneficiaries;

2           C. To make refunds upon termination of an advance tuition  
4           payment contract; and

6           D. To pay the costs of administration and organization of  
8           the fund.

10           3. Investment of assets. Assets of the plan may be  
12           invested in any instrument, obligation, security or property  
14           considered appropriate by the authority and may be pooled for  
16           investment purposes with investments of the State, including, but  
18           not limited to, state pension funds, on such terms and conditions  
20           as are agreeable to the authority.

22           **§12690. Powers**

24           In addition to the general powers of the authority and those  
26           granted by this Act, the authority has the powers necessary or  
28           convenient to carry out and effectuate the purposes, objectives  
30           and provisions of this Act, the purposes and objectives of the  
32           plan and the powers delegated by other laws or executive orders,  
34           including, but not limited to, the power to:

36           1. Invest money. Invest money of the plan, at the  
38           authority's discretion, in any instruments, obligations,  
40           securities or property determined proper by the authority and  
42           name and use depositories for its money;

44           2. Pay money. Pay money to accredited institutions from  
46           the fund;

48           3. Impose reasonable limits. Impose reasonable limits on  
50           the number of participants in the plan;

4. Segregate contributions. Segregate contributions and  
          payments to the plan into various accounts and funds;

5. Contract for goods and services. Contract for goods and  
          services and engage personnel as is necessary, and engage the  
          services of private consultants, actuaries, managers, legal  
          counsel and auditors for rendering professional, management and  
          technical assistance and advice, payable out of money of the plan;

6. Solicit and accept gifts, grants and loans. Solicit and  
          accept gifts, grants, loans and other aid from any person or the  
          Federal Government, State Government or a local government or any  
          agency of the Federal Government, State Government or local  
          government, or to participate in any other way in any Federal  
          Government, State Government or local government program;

2           7. Collect administrative fees. Charge, impose and collect  
3 administrative fees and charges in connection with any  
4 transaction and provide for reasonable penalties, including  
5 default, for delinquent payment of fees or charges or for fraud;

6           8. Procure insurance. Procure insurance against any loss  
7 in connection with the plan's property, assets or activities;

8           9. Enter into contracts. Enter into contracts on behalf of  
9 the plan;

10           10. Administer the fund. Administer the money in the fund;

11           11. Impose reasonable time limits. Impose reasonable time  
12 limits on use of the tuition benefits provided by the plan, if  
13 the limits are made a part of the contract;

14           12. Define the terms and conditions. Define the terms and  
15 conditions under which money may be withdrawn from the plan,  
16 including, but not limited to, reasonable charges and fees for  
17 any such withdrawal, if the terms and conditions are made a part  
18 of the contract;

19           13. Provide for receiving contributions. Provide for  
20 receiving contributions in lump sums or periodic sums; and

21           14. Establish policies; adopt rules. Establish policies  
22 and procedures and adopt rules, including eligibility criteria  
23 and residency requirements to implement this Act. Except as  
24 otherwise provided, rules adopted pursuant to this section are  
25 routine technical rules as defined in Title 5, chapter 375,  
26 subchapter II-A.

27 **§12690-A. Amendments; alternative plans**

28           1. Amendments to chapter. If the authority determines that  
29 amendments to the chapter are necessary in order to enhance the  
30 options available to Maine families for affordable and  
31 predictable financing of postsecondary education, it may propose  
32 the necessary legislation.

33           2. Alternate plans. The authority may develop by rule  
34 alternative postsecondary financing plans under the Maine Prepaid  
35 Tuition Savings Plan that are different from the prepaid tuition  
36 plan provided in this chapter. Rules adopted under this  
37 subsection are major substantive rules as defined in Title 5,  
38 chapter 375, subchapter II-A and must be submitted to the joint  
39 standing committee of the Legislature having jurisdiction over  
40 education for review.

41

2 3. Contract for services. The authority shall endeavor to  
3 work with private sector investment managers and independent  
4 degree-granting colleges and universities in this State to study  
5 the feasibility of instituting programs between these parties  
6 that ensure full tuition payment upon purchase of a prepayment  
7 plan with the private college or university.

8 **§12691. Annual accounting**

10 The authority shall annually prepare or cause to be prepared  
11 an accounting of the plan and shall transmit a copy of the  
12 accounting to the Governor, the President of the Senate and the  
13 Speaker of the House of Representatives. The authority shall  
14 also make available the accounting of the plan to the purchasers  
15 of the plan. The accounts of the authority are subject to annual  
16 audits by the State Auditor or a certified public accountant  
17 appointed by the State Auditor.

18 **§12692. Administering and accounting of plan**

20 The plan must be administered in a manner reasonably  
21 designed to be actuarially sound so that the assets of the plan  
22 will be sufficient to defray the obligations of the plan.

24 1. Annual evaluation. In the accounting of the plan made  
25 pursuant to section 12691, the authority shall annually evaluate  
26 or cause to be evaluated the actuarial soundness of the plan and  
27 determine the additional assets needed, if any, to defray the  
28 obligations of the plan. If there are not funds sufficient to  
29 ensure the actuarial soundness of the plan, it shall adjust  
30 payments of subsequent purchases to ensure its actuarial  
31 soundness.

34 2. Tax status. Before entering into advance tuition  
35 payment contracts with purchasers, the authority shall solicit  
36 answers to appropriate ruling requests from the United States  
37 Internal Revenue Service regarding the tax status of the value  
38 received under the contract to the purchaser or qualified  
39 beneficiary. A contract may not be entered into without the  
40 authority making known the status of the request.

42 3. United States Securities and Exchange Commission  
43 status. Before entering into advance tuition payment contracts  
44 with purchasers, the authority shall solicit answers to  
45 appropriate ruling requests from the United States Securities and  
46 Exchange Commission regarding the application of federal security  
47 laws to the fund. A contract may not be entered into without the  
48 authority making known the status of the request.

50 **§12693. Enforcement of Act**

2           State institutions of higher education, purchasers and  
3           qualified beneficiaries may enforce this Act and any contract  
4           entered into pursuant to this Act.

6           **§12694. Exempt from taxation**

8           The property of the plan and its income and operation are  
9           exempt from all taxation by this State or any of its political  
10           subdivisions.

12           **§12695. Assets used; investing in bonds**

14           The assets of the fund must be preserved, invested and  
15           expended solely pursuant to and for the purposes set forth in  
16           this Act and may not be loaned or otherwise transferred or used  
17           by the authority for any purpose other than the purposes of this  
18           Act. This section may not be construed to prohibit the authority  
19           on behalf of the plan from investing in, by purchase or  
20           otherwise, bonds, notes or other obligations of the State, an  
21           agency of the State or an instrumentality of the State.

22           **§12696. No guarantee of admittance**

24           Nothing in this Act or in an advance tuition payment  
25           contract entered into pursuant to this Act may be construed as a  
26           promise or guarantee by the plan, the authority or the State that  
27           a person will be admitted to a state institution of higher  
28           education, allowed to continue to attend a state institution of  
29           higher education after having been admitted or will be graduated  
30           from a state institution of higher education.

32           **§12697. Exempt from Revised Maine Securities Act**

34           An advance tuition payment contract is exempt from Title 32,  
35           chapter 105. An advance tuition payment contract may not be sold  
36           or otherwise transferred by the purchaser or qualified  
37           beneficiary without the prior approval of the authority.

40           **§12698. Chapter controlling over inconsistent law**

42           To the extent that the provisions of this chapter are  
43           inconsistent with the provisions of any other law, the provisions  
44           of this chapter control.

46  
48                               **SUMMARY**

50           The purpose of this bill is to establish a prepaid tuition  
            program that will encourage long-term family savings for higher

2 education tuition costs. Under this bill, the Finance Authority  
of Maine is authorized to establish and administer the Maine  
4 Prepaid Tuition Savings Plan and, on behalf of the State, to  
contract for the advance payment of tuition by a parent or other  
6 purchaser for a qualified beneficiary to enroll at a campus of  
the University of Maine System to which the qualified beneficiary  
8 is admitted, without further tuition cost to the qualified  
beneficiary. A qualified beneficiary also has the option of  
applying prepaid tuition benefits to attend an accredited  
10 institution of higher education other than a campus of the  
University of Maine System, including an accredited technical,  
12 community or junior college, provided that tuition paid by the  
program to the other institution of higher education is limited  
14 to the total amount of tuition charged at the campus of the  
University of Maine System that charges the highest rate of  
16 tuition.