

# MAINE STATE LEGISLATURE

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# 118th MAINE LEGISLATURE

## FIRST SPECIAL SESSION-1997

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Legislative Document

No. 1778

S.P. 599

In Senate, April 10, 1997

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### An Act to Establish the Maine Prepaid College Tuition Program.

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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 "Joy J. O'Brien".

JOY J. O'BRIEN  
Secretary of the Senate

Presented by Senator MURRAY of Penobscot.  
Cosponsored by Representative WATSON of Farmingdale and  
Senators: CATHCART of Penobscot, CLEVELAND of Androscoggin, PENDLETON of  
Cumberland, SMALL of Sagadahoc, Representatives: BAKER of Bangor, BRENNAN of  
Portland.

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

4 Sec. 1. 5 MRSA §12004-F, sub-§18 is enacted to read:

6 18. Board of Legislative 20-A MRSA  
Directors, Maine Prepaid Per Diem and §12683  
8 College Tuition Program Expenses

10 Sec. 2. 20-A MRSA c. 430-C is enacted to read:

12 CHAPTER 430-C

14 MAINE PREPAID COLLEGE TUITION ACT

16 §12681. Short title

18 This chapter may be known and cited as the "Maine Prepaid  
College Tuition Act."

20 §12682. Definitions

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

26 1. Advance payment contract. "Advance payment contract"  
means a contract entered into between the Board of Directors of  
28 the Maine Prepaid College Tuition Program and a purchaser  
pursuant to this chapter for the advance payment of housing fees  
at an institution of higher education.

30 2. Beneficiary. "Beneficiary" means the person on whose  
32 behalf a prepaid tuition contract is entered into, who is younger  
than 18 years of age at the time the purchaser enters into the  
34 contract and who is:

36 A. A resident of this State at the time the purchaser  
enters into the contract; or

38 B. A nonresident whose parent, grandparent or legal  
40 guardian is a resident of this State at the time that the  
42 contract is entered into.

44 3. Board. "Board" means the Board of Directors of the  
Maine Prepaid College Tuition Program.

46 4. Institution of higher education. "Institution of higher  
48 education" means any campus of the University of Maine System,  
the Maine Technical College System or the Maine Maritime Academy.

2           **5. Prepaid tuition contract.** "Prepaid tuition contract"  
means a contract entered into between the Board of Directors of  
4           the Maine Prepaid College Tuition Program and a purchaser  
pursuant to this chapter for the advance payment of tuition and  
6           fees at an institution of higher education.

8           **6. Program.** "Program" means the Maine Prepaid College  
Tuition Program.

10          **7. Purchaser.** "Purchaser" means a person who makes or is  
obligated to make advance payments in accordance with a prepaid  
12          tuition contract entered into pursuant to this chapter.

14          **8. Trust fund or fund.** "Trust fund" or "fund" means the  
Maine Prepaid College Tuition Trust Fund, established in section  
16          12687, to be administered by the Treasurer of State.

18          **9. Tuition.** "Tuition" means the quarter, semester or term  
charges and all required fees imposed by an institution of higher  
20          education as a condition of enrollment for all students.

22          **§12683. Board of directors**

24          The Board of Directors of the Maine Prepaid College Tuition  
Program is created as a body corporate and politic and an  
26          incorporated public instrumentality of the State. Exercise of  
the powers conferred in this chapter by the board is held to be  
28          the performance of essential governmental functions.

30          **1. Membership.** The board consists of 9 members as follows.

32          A. There are 7 voting members of the board: the Treasurer  
of State, the Commissioner of Education, the Chancellor of  
34          the University of Maine System, the President of the Maine  
Technical College System, the Commissioner of Administrative  
36          and Financial Services and one public member from each  
congressional district to be appointed by the Governor  
38          subject to confirmation by the Legislature. One public  
member must be appointed for an initial term of 4 years and  
40          the other public member must be appointed for an initial  
term of 5 years. On the expiration of either term, the  
42          Governor shall appoint a successor subject to confirmation  
by the Legislature for a term of 5 years.

44          B. There are 2 nonvoting members, one appointed by the  
President of the Senate and one by the Speaker of the House  
46          of Representatives. Nonvoting members serve for the length  
48          of the term of each appointing official, are eligible for  
reappointment and serve until a successor is appointed and  
50          qualified.

2 Any person appointed to fill a vacancy on the board must be  
4 appointed in a like manner and may serve for only the unexpired  
term.

6 2. Qualifications. Each board member appointed must  
8 possess knowledge, skill and experience in business or financial  
matters commensurate with the duties and responsibilities of the  
10 trust fund.

12 3. Compensation. Members of the board are eligible for  
14 reimbursement for each day's official duties of the board at the  
same per diem as established for Legislators and actual travel  
and lodging expenses.

16 4. Chair. The board shall annually elect one member to  
18 serve as chair and one member to serve as vice-chair. The  
vice-chair shall act as chair in the absence of or upon the  
20 disability of the chair or in the event of a vacancy of the  
office of chair.

22 **§12684. Powers of board**

24 In addition to the powers granted by any other provision of  
26 this Act, the board has the powers necessary or convenient to  
carry out the purposes and provisions of this Act and the  
28 purposes and objectives of the trust fund and the powers  
delegated by any other law of the State, including, but not  
30 limited to, the following express powers:

32 1. Bylaws. To adopt and amend bylaws;

34 2. Rules. To adopt rules necessary to implement the  
36 provisions of this Act, including residency requirements. Rules  
adopted by the board are routine technical rules as defined in  
Title 5, chapter 375, subchapter II-A;

38 3. Investments. To invest any funds of the trust fund in  
40 any instrument, obligation, security or property that constitutes  
a legal investment for public funds in the State and to name and  
42 use depositories for its investments and holdings;

44 4. Contracts. To execute contracts and other necessary  
46 instruments and to contract for necessary goods and services, to  
employ necessary personnel and to engage the services of  
48 consultants for administrative and technical assistance in  
carrying out the responsibilities of the trust fund;

- 2           **5. Limit participation.** To impose reasonable limits on the  
number of contract participants in the trust fund at any given  
period of time;
- 4
- 6           **6. Accept gifts.** To solicit and accept gifts, including  
bequests or other testamentary gifts made by will, trust or other  
disposition, grants, loans and other aids from any private source  
8 or to participate in any other way in any federal, state or local  
governmental programs in carrying out the purposes of this  
10 chapter;
- 12           **7. Withdrawal or refund of payments.** To define the terms  
and conditions under which prepaid tuition and advance payment  
14 contracts may be terminated and payments may be withdrawn or  
refunded from the trust fund and impose reasonable charges for  
16 withdrawal or refund of payments from the trust fund;
- 18           **8. Limit use.** To impose reasonable time limits on the use  
of the tuition benefits provided by the program;
- 20
- 22           **9. Receipt of contributions.** To provide for the receipt of  
contributions to the trust fund in lump sums or installment  
24 payments;
- 26           **10. Seal.** To adopt an official seal;
- 28           **11. Sue.** To sue and be sued;
- 30           **12. Transactions.** To establish agreements or enter into  
other transactions with federal, state and local agencies,  
32 including institutions of higher education;
- 34           **13. Segregate funds.** To segregate contributions and  
payments to the fund into various accounts and funds;
- 36           **14. Administrative fees.** To require and collect  
administrative fees and charges in connection with any  
38 transaction and impose reasonable penalties, including voiding,  
for delinquent payment or for entering into an advance payment  
40 contract on a fraudulent basis;
- 42           **15. Insurance.** To procure insurance against any loss in  
connection with the property, assets and activities of the fund  
44 or the board;
- 46           **16. Require oaths.** To require that purchasers of advance  
payment contracts verify, under oath, any requests for contract  
48 conversions, substitutions, transfers, cancellations, refund  
requests or contract changes of any nature;
- 50

2        **17. Fiduciary responsibility.** To administer the fund in a  
4 manner that is sufficiently actuarially sound to meet the  
6 obligations of the program. The board shall annually evaluate or  
8 cause to be evaluated the actuarial soundness of the fund. If  
the board perceives a need for additional assets in order to  
preserve actuarial soundness, the board may adjust the terms of  
subsequent advance payment contracts to ensure that soundness;

10       **18. Investment plan.** To establish a comprehensive  
12 investment plan for the purposes of this chapter. The  
14 comprehensive investment plan must specify the investment  
policies to be used by the board in its administration of the  
fund;

16       **19. Transfer investments.** To sell, assign, transfer and  
18 dispose of any of the securities and investments of the program.  
The sale, assignment, transfer or disposal must have the majority  
approval of the board. All investments must be acquired by the  
board at prices not exceeding the prevailing market values of  
20 those securities. Any limitations on investments in this chapter  
are applicable only at the time of purchase and do not require  
22 the liquidation of any investment at any time. All investments  
must be clearly marked to indicate ownership by the program and,  
24 to the extent possible, must be registered in the name of the  
program. All interest derived from investments and any gains  
26 from the sale or exchange of investments must be credited by the  
board to the account of the program;

28       **20. Employ investment managers.** To employ or contract with  
30 investment managers, evaluation services or other services as  
32 determined by the board to be necessary for the effective and  
efficient operation of the program;

34       **21. Delegate investment plan responsibilities.** To delegate  
36 responsibility for administration of the required comprehensive  
investment plan to a qualified consultant hired by the board.  
38 Directly or through the consultant, the board may contract to  
provide services that are a part of the comprehensive investment  
40 plan or as may be determined necessary by the board or the  
consultant, including, but not limited to, providing consolidated  
42 billing, individual and collective record keeping and accounting,  
and asset purchase, control and safekeeping;

44       **22. Annual report.** To annually prepare or cause to be  
46 prepared a report setting forth in appropriate detail an  
accounting of the fund and a description of the financial  
48 condition of the program at the close of each fiscal year. The  
report must be submitted on or before January 31st of each year  
50 to the Governor, the President of the Senate, the Speaker of the  
House of Representatives, and members of the boards of trustees

2 of institutions of higher education and the State Board of  
Education. In addition, the board shall make the report  
4 available to purchasers of prepaid tuition contracts and advance  
payment contracts. By March 31st of each year, the board shall  
6 provide complete prepaid tuition contract and advance payment  
contract sales information, including projected postsecondary  
8 enrollments of beneficiaries, to the boards of trustees of  
institutions of higher education. The accounts of the fund are  
subject to annual audits by the State Auditor;

10  
12 **23. Marketing.** To solicit and accept proposals for the  
marketing of the program. The entity selected pursuant to this  
14 subsection shall serve as a centralized marketing agent for the  
program and is solely responsible for the marketing of the  
16 program. Any materials produced for the purpose of marketing the  
program must be submitted to the board for review. The materials  
18 may not be made available to the public before they are approved  
by the board. Any educational institution may distribute  
20 marketing materials produced for the program; however, the  
materials must have been approved by the board prior to  
distribution;

22  
24 **24. Other policies.** To establish other policies,  
procedures and criteria necessary to implement and administer the  
26 provisions of this chapter; and

28 **25. Delegation to treasurer.** For efficient and effective  
administration of the program and trust fund, to authorize the  
30 Treasurer of State to carry out the powers and duties set forth  
in this chapter.

32 **§12685. Types of plans**

34 The board shall make prepaid tuition contracts available for  
the following plans.

36  
38 **1. University plan.** Through the university plan, a prepaid  
tuition contract provides prepaid tuition and required fees for  
40 the beneficiary to attend a campus of the University of Maine  
System for a specified number of undergraduate credit hours not  
42 to exceed the typical full-time hourly course load as defined by  
the institution for tuition payment purposes for a 4-year  
baccalaureate degree.

44  
46 **2. Technical college plan.** Through the technical college  
plan, a prepaid tuition contract provides tuition and required  
48 fees for the beneficiary to attend a campus of the Maine  
Technical College System for a specified number of undergraduate  
credit hours not to exceed the typical full-time hourly course



2 load as defined by the institution for tuition payment purposes  
3 for a 2-year certificate or degree.

4 3. Maritime academy plan. Through the maritime academy  
5 plan, a prepaid tuition contract provides prepaid tuition and  
6 required fees for the beneficiary to attend the Maine Maritime  
7 Academy for a specified number of undergraduate credit hours not  
8 to exceed the typical full-time hourly course load as defined by  
9 the institution for tuition payment purposes for a 4-year  
10 baccalaureate degree.

12 4. Combination college plan. Through the combination  
13 college plan, a prepaid tuition contract provides prepaid tuition  
14 and required fees for the beneficiary to attend:

16 A. A campus of the University of Maine System for a  
17 specified number of credit hours not to exceed the typical  
18 full-time hourly course load as defined by the institution  
19 for tuition payment purposes for a 4-year baccalaureate  
20 degree;

22 B. A campus of the Maine Technical College System for a  
23 specified number of undergraduate credit hours not to exceed  
24 the typical full-time hourly course load as defined by the  
25 institution for tuition payment purposes for a 2-year  
26 certificate or degree; or

28 C. The Maine Maritime Academy for a specified number of  
29 credit hours not to exceed the typical full-time hourly  
30 course load as defined by the institution for tuition  
31 payment purposes for a 4-year baccalaureate degree.

32 **§12686. Dormitory residence plan**

34  
35 Through the dormitory residence plan, an advance payment  
36 contract provides prepaid housing fees for a maximum of 8  
37 semesters of full-time undergraduate enrollment in an institution  
38 of higher education. Dormitory residence plans are optional and  
39 may be purchased only in conjunction with a prepaid tuition  
40 plan. Dormitory residence plans must be purchased in increments  
41 of 2 semesters. Beneficiaries bear the cost of any additional  
42 elective charges such as laundry service or long-distance  
43 telephone service. An institution of higher education may  
44 specify the residence halls eligible for inclusion in the plan.  
45 An institution of higher education may request immediate  
46 termination of a dormitory contract based on a violation or  
47 multiple violations of rules of the residence hall.  
48 Beneficiaries have the highest priority in the assignment of  
49 housing with institutions of higher education residence halls.  
50 If sufficient housing is not available for all beneficiaries, the

2 board shall refund the purchaser or beneficiary an amount equal  
3 to the fees charged for dormitory residence during that semester.

4 **§12687. Applicability to private and out-of-state tuitions**

6 Under this chapter, a purchaser may enter into a prepaid  
7 tuition contract with the board under which the beneficiary is to  
8 attend a public institution of higher education in the State. If  
9 the beneficiary of a plan described in section 12685 or 12686  
10 enrolls in any in-state or out-of-state accredited private 4-year  
11 or 2-year college or an out-of-state accredited, state-supported,  
12 nonprofit 4-year or 2-year college or university, the board shall  
13 pay to the institution an amount up to but not greater than the  
14 tuition and required fees that the board would have paid had the  
15 beneficiary enrolled in an institution of higher education  
16 covered by the plan selected in the prepaid tuition contract and,  
17 if applicable, the advance payment contract. The beneficiary is  
18 responsible for paying a private institution or an out-of-state  
19 public institution the amount by which the tuition, required fees  
20 and, if applicable, the housing fees of the institution exceed  
21 the tuition, required fees and housing fees paid by the board.

22 **§12688. Termination of contract**

24 If the beneficiary decides not to attend an institution of  
25 higher education or another eligible educational institution in  
26 this or another state, fails to be admitted to an institution of  
27 higher education or another eligible educational institution in  
28 this or another state before reaching 25 years of age, or dies  
29 before fulfillment of a prepaid tuition contract or an advance  
30 payment contract, the contract or contracts are terminated and  
31 the remaining funds held on account of the beneficiary must be  
32 refunded to the purchaser as determined by the board.

34 **§12689. Maine Prepaid College Tuition Program Trust Fund**

36 1. Fund created. The Maine Prepaid College Tuition Program  
37 Trust Fund is created and must be administered by the Treasurer  
38 of State. The fund consists of state appropriations, money  
39 acquired from other governmental or private sources and money  
40 remitted in accordance with prepaid tuition contracts and advance  
41 payment contracts.

44 2. Administration of fund. The official location of the  
45 trust fund is the Office of the Treasurer of State, and the  
46 facilities of the Treasurer of State must be used in the  
47 administration of the fund, including, but not limited to, the  
48 keeping of records, the management of bank accounts and other  
49 investments, the transfer of funds and the safekeeping of  
50 securities evidencing investments. If the dividends, interest

2 and gains of the fund exceed the amount necessary for program  
3 administration and disbursements, the board may designate a  
4 reasonable percentage of the fund to serve as a contingency  
5 fund. Any earnings above those necessary to finance the  
6 contingency fund must be used by the board to offset charges to  
7 contract purchasers.

8 3. Management of deposits in fund. Payments received by  
9 the board from purchasers on behalf of beneficiaries or from any  
10 other source, public or private, must be deposited in the fund,  
11 and the fund may be divided into separate accounts as may be  
12 determined by the board.

14 4. Receipt of gifts. The trust fund, through the Treasurer  
15 of State, may receive and deposit into the trust fund any gift of  
16 any nature, including real or personal property, made by an  
17 individual by testamentary disposition, including, without  
18 limitation, any specific gift or bequest made by will, trust or  
19 other disposition.

20 5. Actuarial assistance. The board shall obtain  
21 appropriate actuarial assistance to establish, maintain and  
22 certify a fund sufficient to meet the obligation of the trust  
23 fund.

26 6. Pledge to support contracts. In order to provide funds  
27 to enable the trust fund to pay all amounts that become due under  
28 prepaid tuition contracts, there is irrevocably pledged to that  
29 purpose from the trust fund money as necessary to pay all amounts  
30 that become due under prepaid tuition contracts at any time. In  
31 order to carry out the pledge, the board shall determine the  
32 amount of the future obligations of the trust fund under prepaid  
33 tuition and advance payment contracts by an appropriate actuarial  
34 method in each fiscal year. After that determination has been  
35 made, all money on deposit in the trust fund, including the  
36 amount of future obligations, must remain on deposit in the trust  
37 fund, is subject to the pledge and must be allocated by the  
38 Legislature.

40 7. Administrative account. There is created a separate  
41 account with the Treasurer of State to be known as the Prepaid  
42 Affordable College Tuition Administrative Account for the  
43 purposes of implementing the program and maintaining the fund  
44 established in this chapter. The administrative operating budget  
45 of the board must be approved annually by the Legislature and  
46 money must be allocated from the trust fund to the administrative  
47 account for that year's expenses.

48 §12690. Additional board duties  
49

2           In addition to any other requirements of this chapter, the  
3 board of directors shall:

4           1. Contract statement. Not later than December 1st of each  
5 year, furnish without charge to each purchaser a statement of the  
6 amount paid by the purchaser under the prepaid tuition contract,  
7 the number of years originally covered by the contract, the  
8 number of years remaining under the contract and any other  
9 information the board determines by rule is necessary or  
10 appropriate. The board shall furnish a statement complying with  
11 this subsection to a purchaser or beneficiary upon written  
12 request. The board may charge a reasonable fee for a statement  
13 furnished under this subsection;

14           2. Summary information. Make available summary information  
15 on the financial condition of the trust fund to all purchasers of  
16 prepaid college tuition contracts;

17           3. Audit. Have an annual accounting of the trust fund  
18 prepared by the State Auditor or by an independent auditor and  
19 transmit a copy to the Governor, the President of the Senate and  
20 the Speaker of the House of Representatives; and

21           4. Agreements with institutions of higher education. Make  
22 all necessary and appropriate arrangements with institutions of  
23 higher education in order to fulfill its obligations under the  
24 prepaid tuition contracts, which arrangements must include the  
25 payment by the trust fund to a college or university of current  
26 applicable tuition and fee charges on behalf of a beneficiary.

27           §12691. Prohibited activities

28           A member or employee of the board may not have any direct or  
29 indirect interest in the income, gains or profits of the board or  
30 in any investment made by the board, nor may a member or employee  
31 receive any pay or emolument for services in connection with any  
32 investment made by the board. A member or employee of the board  
33 may not become an endorser or surety or in any manner an obligor  
34 for money loaned by or borrowed from the program.

35           §12692. Income tax treatment

36           Any interest, dividends or gains accruing on the payments  
37 made by purchasers of prepaid tuition contracts under the terms  
38 of this chapter must be excluded from the gross income of that  
39 purchaser or beneficiary for purposes of Title 36, chapter 805.

40           §12693. Promise or guarantee of admission

2 This section is not a promise or guarantee that the  
3 beneficiary will be admitted to any institution of higher  
4 education or to a particular institution of higher education or,  
5 after admission, will be allowed to continue enrollment at an  
6 institution of higher education or will be graduated from an  
7 institution of higher education.

8 **§12694. Full faith and credit**

10 The State agrees to meet the obligations of the board to  
11 beneficiaries if the money in the fund fails to offset the  
12 obligations of the board. If there is not enough money in the  
13 fund to pay the tuition and required fees of the institution of  
14 higher education in which a beneficiary enrolls as provided by  
15 the prepaid tuition contract, the Legislature shall appropriate  
16 to the fund the amount necessary for the board to pay the  
17 applicable amount of tuition and required fees of the institution.  
18

20 **SUMMARY**

22 This bill establishes the Maine Prepaid College Tuition  
23 Program, administered by a board of trustees with the  
24 administrative support of the Treasurer of State. The program  
25 provides for advance purchase by parents of tuition and housing  
26 contracts at current prices that will provide for future  
27 attendance by their children at campuses of the University of  
28 Maine System, the Maine Technical College System or the Maine  
29 Maritime Academy. Funds under the contracts may be used for  
30 attendance at private colleges and universities and to  
31 out-of-state public institutions of higher education up to the  
32 amount that would have been paid to an in-state institution under  
the contract.